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IN THE

SUPREME COURT OF THE UNITED STATES

No. 76-1252

In the Matter of FIRST COLONIAL CORP. OF AMERICA, Bankrupt

FRANZ J. BADDOCK,

Petitioner,

versus

AMERICAN BENEFIT LIFE INSURANCE COMPANY
BERT K. ROBINSON
R. BOATNER HOWELL, JR.
ERWIN A. LAROSE
JAMES F. PIERSON, JR.,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PRELIMINARY EXPLANATION

Without preliminary explanation, this Court could not

fully understand background facts appearing so fantastic and unbelievable at times, that the reader may well doubt accuracy thereof! The writer assures this Court **he is willing to be disbarred if any material mis-statement of fact occurs herein!**

AMERICAN BENEFIT LIFE INSURANCE COMPANY ("American Benefit") is part of a group of entities referred to herein as the American Benefit Complex! In the view of Louisiana's Supreme Court[1] and its Court of Appeal for the Fourth Circuit[2], American Benefit is identified with an individual the subject of an **extremely interesting** article in NEW ORLEANS MAGAZINE.[3] Neither the individual nor American Benefit appear strangers to litigation!

From what appears through proceedings either presently pending and/or previously filed in the United States District Court for the Eastern District of Louisiana:

1. Proceedings were filed against American Benefit by the U. S. Department of Labor[4] and by another Complainant.[5]

2. Proceedings were invoked **against** the individual by the Board of Governors of the Federal Reserve System, and **by** the individual against the same Board, and Comptroller of the Currency.[6] In addition, another Civil Action was filed against the individual **and** American Benefit in *Henican v. American Benefit Life Insurance Company* et als., Docket

1. 310 So2d 806, 825-826.
2. 299 So2d 481, 484, 486-487.
3. April 1972 issue at pp's 56 et seq.
4. Civil Action No. 74-2637.
5. Civil Action No. 74-3206.
6. See: Civil Action No. 75-1044 and Exhibit 1 therein.

No. 69-2898. The proceedings by the Board and *Henican*, supra, appear predicated under Titles 12 and 18 of the United States Code.

3. Further, other Civil Actions against **both** the individual **and** American Benefit, appear to allege violations of the Securities Act of 1933 (15 USCA 77a. et seq); Securities Exchange Act of 1934 (15 USCA 78a. et seq); and Regulation 10b-5 of the Securities and Exchange Commission, namely:

Western Empire Financial, Inc. v. American Benefit Life Insurance Company et als. Docket No. 73-2691

Bankers Union Life Insurance Company v. American Benefit Life Insurance Company et als. Docket No. 74-1449

Security-Guaranty Life Insurance Company et al v. American Benefit Life Insurance Company et als. Docket No. 74-1450

Aside from the aforesaid litigation appearing **quite extensive** in scope, what appears unusual, in the view of the writer, is the number of Federal Judges who apparently felt compelled to disqualify themselves! One disclosed he was indebted unto the bank named by the Board of Governors, — another, that he was a customer of the same bank, — another, that he was a stockholder in the same bank, — still another, that as a practicing attorney he acquired a sufficient knowledge of the substance and background of matters involved to make it improper, in his opinion, for him to sit in judgment, — while at least three (3) others ordered reallotment of cases without disclosing reasons in the orders

directing same. AT LEAST SEVEN (7) DISTRICT JUDGES ORDERED REALLOTMENT!

In accordance with RULE 23 of this Court:

a) The Consolidated Opinion of the Court of Appeals in 75-2260 and 75-2644 is annexed as **Exhibit "A."**

b) Judgment of the Court of Appeals is dated **January 10, 1977** and was entered on the same day. **Exhibit "A-1."**

c) Judgment of the District Court appears as **Exhibit "G."**

d) Rehearing was DENIED on **February 2, 1977.** See: **Exhibits "B" "C" and "D."**

e) Statutory provisions believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari are: 28 USCA 1254(1), 28 USCA 2101(c), and Section 24(c) of the Bankruptcy Act (11 USCA 47(c)).

CONCISE STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

1. THE COURT OF APPEALS HAS DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW IN DIRECT CONFLICT WITH **INNUMERABLE DECISIONS** OF THE SUPREME COURT, ESPECIALLY ON THE QUESTION OF "STANDING."

2. THE COURT OF APPEALS HAS ALSO DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW WHICH

HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

3. THE COURT OF APPEALS HAS DECIDED FEDERAL QUESTIONS IN A WAY IN CONFLICT WITH THE BANKRUPTCY ACT AND APPLICABLE ORDERS OF THIS COURT, NAMELY, THE RULES OF BANKRUPTCY PROCEDURE.

4. THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL INTERPRETATIONS OF THE BANKRUPTCY ACT AND RULES OF BANKRUPTCY PROCEDURE, AS ENUNCIATED BY **THIS COURT**, THE VARIOUS UNITED STATES COURTS OF APPEALS **INCLUDING THE FIFTH CIRCUIT**, AND HAS SO FAR SANCTIONED SUCH A DEPARTURE THEREFROM, AS TO CALL FOR THIS COURT'S POWER OF REVIEW.

CONCISE STATEMENT OF THE CASE

(NOTE: The reference "Tr." is to the page or pages of the Appendix in the United States Court of Appeals.)

FIRST COLONIAL CORP. OF AMERICA ("First Colonial") is a corporation registered with the Securities and Exchange Commission, and has registration numbers **0-1792** and **2-23329.** Its stock is owned by innumerable parties. Its capital structure indicates $363,870.00 of preferred stockholders, $938,993.00 of common stockholders, and paid-in surplus of $309,244.00. The opinion of the Fifth Circuit refers to it as an abandoned corporation. IT WOULD BE MORE FITTING TO REFER TO IT AS A **RAVAGED, PIL-**

LAGED, DESTROYED, THEN ABANDONED CORPORATION!

In 1970 an involuntary petition in bankruptcy was filed against First Colonial in the United States District Court for the Middle District of Louisiana. The writer was one of the Attorneys for the Petitioning Creditor. On September 8th of that year, it was adjudged a bankrupt. Thereafter, the undersigned became its trustee.

The examination in bankruptcy was quite lengthy. In latter 1971, a comprehensive "Trustee's Report" was filed, together with a CPA Report, which indicated there were possible causes of action in favor of bankrupt, against innumerable parties, in the range of several millions of dollars!

In 1972 trustee petitioned for appointment of Attorney under general retainer, requesting a specialist in the field (Tr. 60). By Order entered February 29, 1972 (Tr. 65), he was appointed. On March 7th 1972 he declined appointment because of the arduous nature of the legal work. Thus, on March 14, 1972, the Bankruptcy Court vacated its Order (Tr. 66-67). Another Attorney was appointed, and, on discovering the arduous nature of the legal work, also requested to be relieved of the assignment, which was thereafter vacated. Other efforts were made by trustee to procure the law firm of *Milling, Benson, Woodward, Hillyer & Pierson* in New Orleans, since this firm represented the "Bassan Group" of Creditors holding judgments of approximately $280,000.00 against bankrupt. This firm, also, declined appointment (Tr 62). As the Hon. E. Gordon WEST pointed out in his Reasons for Judgment (Tr. 29):

> "* * * * * I can say, I think without contradiction, that many lawyers would have shied away from (these cases) in the face of some of the adversity that was presented the attorneys in these proceedings."

Because of these difficulties in obtaining Attorneys under general retainer, the Bankruptcy Court thereafter elected to appoint Attorneys for specific purposes! These Orders are all in the record and all except one are in the Appendix.

Specifically, in reference to these appointments:

1. On March 13, 1972 trustee petitioned for appointment of Attorney BERT K. ROBINSON (Tr. 68). The specific purpose for the request was detailed therein. On March 14, 1972 the request was granted and the writer was named Assistant Attorney in the Order (Tr. 73.) **This became the authorization for filing Civil Action 72-97.**

2. On April 4, 1972 trustee petitioned for appointment of additional counsel, **for the litigation which ultimately became Civil Action 72-236** (Tr. 75). On the same date the Court granted the request for the purposes detailed in the application (Tr 79) and the writer was named Assistant Attorney to ERWIN A. LA ROSE. On July 10, 1973, on Motion of the latter, the Order was revised to name the undersigned Associate Counsel in the cause.

3. On April 14, 1972 trustee petitioned for the appointment of additional counsel, **for the litigation which ultimately became Civil Action 72-222** (Tr. 80). On April 18, 1972, the Court granted the request for the purposes detailed in the application, and later the writer became Associate Counsel in this cause (Tr 90). A later Order substituted Attorney R.

BOATNER HOWELL as counsel in this cause (Tr 93-96). The other Attorney named in the April 18, 1972 Order has since resigned, and his name may be disregarded.

4. On April 18, 1972 trustee petitioned for appointment of additional counsel, **for the litigation which ultimately became Civil Action 72-233** (Tr. 85). On the same date the Court granted the request for the purposes detailed in the application, and R. BOATNER HOWELL became counsel (Tr 88). Later, on application of the latter, the writer became Associate Counsel in the same cause, replacing Attorney William H. Brown (Tr. 91-92).

Thus, in each and every instance, the Bankruptcy Court was fully apprised of the specific reason for each request, and the purpose thereof. **All Orders decreed that the Compensation of each Attorney would thereafter be determined by the Court.**

(NOTE: The necessity for the **preliminary statement** will now become apparent.)

As a result of these authorizations, four (4) suits were filed in behalf of FIRST COLONIAL CORP. OF AMERICA in the United States District Court for the Middle District of Louisiana, namely:

1. **Civil Action No. 72-97** which was filed against AMERICAN BENEFIT LIFE INSURANCE COMPANY et als.

2. **Civil Action No. 72-222** which was filed against AMERICAN BENEFIT LIFE INSURANCE COMPANY et als.

3. **Civil Action No. 72-233** which was filed against various entities, some of whom appeared to have close association with the American Benefit Complex.

4. **Civil Action No. 72-236** which was filed against NATIONAL AMERICAN LIFE INSURANCE COMPANY, which was, at all times pertinent, **under the control of, and part of, the American Benefit Complex!** Stated simply:

(1) CA 72-97 involved a "premium-bribe" on a note of National Securities, Inc.[7] that American Benefit had assumed the payment thereof. The amount sought to be recovered from American Benefit et als was $2,350,000.00.

(2) CA 72-222 involved events **after** a former President of First Colonial, sold the control thereof. The amount sought to be recovered from American Benefit et als was $443,672.00.

(3) CA 72-333 involved events **before** the former President sold control of First Colonial. The amount sought in recovery was $2,481,149.20.

(4) CA 72-236 involved activities of National American Life Insurance Company primarily during the period **before** control of First Colonial was sold. The amount sought to be recovered from National American Life Insurance Company was (subject to certain recoveries in 72-233) $2,040,831.97.

These four (4) suits were integral parts of an overall pattern of suits, whereby First Colonial was to be made whole, after the events by which it had been victimized and defrauded. They were predicated on alleged **massive** viola-

7. See: S.E.C. v. National Securities, Inc., et al 393 U.S. 453 89 S. Ct. 564.

tions of: The Bankruptcy Act (11 USCA 1 et seq); The Securities Act of 1933 (15 USCA 77a. et seq); The Securities Exchange Act of 1934 (15 USCA 78a. et seq); The Investment Companies Act of 1940 (15 USCA (80a-1 et seq); and Regulation 10b-5 of the Securities and Exchange Commission. **Thirty-one (31) Defendants were involved in the litigation!**

Apparently in retaliation[8] and perhaps for profit, the American Benefit Complex struck with full fury against the Bankruptcy Administration!

Through one maneuver, the Complex[9] **purchased** all the Claims of Ordinary Creditors that had TIMELY FILED Proofs of Claim with the Bankruptcy Court, for about 75¢ on the Dollar. Thus, re Claims TIMELY FILED in the aggregate of $493,963.08, the American Benefit Complex purchased these Claims for only $401,005.00, **then demanded FULL payment plus additional interest from the estate!**

In this, apparently the American Benefit Complex overlooked Section 57n. of the Bankruptcy Act (11 USCA 93n.) which provides:

> "When in any case all claims which have been duly allowed have been paid in full, **claims not filed within the time hereinabove prescribed may nevertheless be filed within such time as the Court may fix** or for cause shown extend and, if duly proved, **shall be allowed against any SURPLUS remaining in such case."** (Emphasis ours)

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8. One report reached trustee to the effect that his body would wind up in a Louisiana swamp if he failed to follow orders!

9. Through its National American Life Insurance Company.

As a result thereof, trustee made a compromise settlement and paid National American $460,000.00 for these Claims **and** a lien Claim held by the latter—which settlement was approved by the Bankruptcy Court, and all terms thereof are reflected in Tr. 132-141! **If the Supreme Court has wondered how the TIMELY FILED Claims came to be paid, it now has the answer!**

This will also explain to the Supreme Court why there was not the customary "hearing" on Attorneys' Fees in this case. The reason therefor lies squarely as the responsibility of the American Benefit Complex! Having **purchased** all of the TIMELY FILED Claims of Ordinary Creditors, and these purchased Claims having been **paid**, there were no **listed Creditors** within the meaning of Sec. 58a(8) of the Bankruptcy Act (11 USCA 94a(8)) and RULE 203(a)(6) of the Rules of Bankruptcy Procedure, at the time the Attorneys' Fees were determined! Additionally, the Attorney for National American Life Insurance Company had notified the Bankruptcy Court in writing that his company (that had purchased the Claims) disclaimed any interest in the fixing of the fees!

Unfortunately, the other maneuver of the American Benefit Complex was tragically successful! After the plenary suits had been pending for approximately 2 years, and had withstood all attacks thereon such as Motions to Dismiss, etc., AND—

1. After trustee had consummated a $5,000.00 recovery against **one** Defendant—

2. AND a $75,000.00 settlement with another—

3. AND a $600,000.00 agreement of settlement with another[10]—

4. AND when the bankrupt estate was in the midst of negotiating a $250,000.00 settlement with another—**All under reservation of ALL rights against the remaining Defendants, INCLUDING AMERICAN BENEFIT—**

THE UNITED STATES DISTRICT COURT PERMITTED THE AMERICAN BENEFIT INTERESTS TO "TAKE OVER" ALL FOUR (4) OF THE PLENARY SUITS FILED IN BEHALF OF THE BANKRUPT ESTATE!

The Orders directing trustee to **abandon** these suits appear as **Exhibits "H" and "I"** annexed hereto. In more than 25 years of practice within the field of bankruptcy, the writer has been unable to discover any comparable precedent!

Trustee filed ten (10) pages of objections with the Court (Tr 102-111) and the three (3) other Attorneys representing the bankrupt estate voiced intense opposition to the Hon. E. Gordon WEST (Tr 120-122). In addition, trustee filed Proceeding No. 74-117 of the Middle District (Tr. 112-119) in the hope that His Honor would at least permit appointment of a **Federal Court Receiver** to take over the suits, rather than the other interests. These efforts failed completely!

The only remedies available were applications to the Fifth Circuit under 28 USCA 1651, which were taken on June 17,

10. Which was formally approved by a majority of the Creditors AND the Bankruptcy Court.

1974, and again on July 8, 1974. For reasons undisclosed, the Fifth Circuit denied **both applications**![11] Appeal would have been ineffective for two reasons: First, the bankrupt estate could not have furnished supersedeas under RULE 8 FRAP and RULE 805 RBP.[12] Further, the time lag between commencing Appeal and disposition by the Fifth Circuit, was an insurmountable barrier.[13]

(NOTE: The necessity for the preliminary statement will now become even **more apparent.**)

On June 20, 1974, AMERICAN BENEFIT LIFE INSURANCE COMPANY petitioned the Civil District Court for the Parish of Orleans, to appoint a "receiver" for the First Colonial Corp. of America.[14] The fact that First Colonial, according to the bankruptcy records, never had an office in New Orleans, had never been domiciled in that city, and was without an agent for service of process in 1974, appears not to have deterred American Benefit from requesting the appointment.

On July 1, 1974, the Court entered its Amended and Supplemental Order to Abandon the plenary suits.[15] This was

11. Numbers 73-3287 and 73-3616.

12. The Supreme Court may care to note that since the Orders to Abandon were under the signature of the Bankruptcy Judge, any Appeal to the Fifth Circuit would have had to be preceded by an Appeal to the District Court under Rules 801 et seq RBP.

13. For example, although the present Appeals were commenced in 1974, the Fifth Circuit did not render its opinion until 1977! However, after the plenary suits were taken over, they were disposed of, in the opinion of trustee, in 1974.

14. No. 575-038, Division "A," Docket No. 5.

15. Exhibit "I."

followed, on July 2, 1974, by the Court allowing the state-court appointed "receiver"[16] to be substituted as Party-Plaintiff in Civil Action 72-236.[17] According to the Docket Sheet of this suit, the substituted Plaintiff and National American Life Insurance Company (the only Defendant therein) filed a Joint Motion for DISMISSAL, on the same date of July 2, 1974.[18] **Thus, a $2,040,831.97 suit against an entity within the American Benefit Complex was eliminated!**

On July 11, 1974, the Court granted the Motion of the state-court appointed "receiver" to be substituted as Party-Plaintiff in the remaining Civil Actions 72-97, 72-222, and 72-233.[19]

Specifically in reference to Civil Action 72-97, the Master made reference in his Report to a Stipulation of Settlement by and between the substituted receiver/plaintiff and American Benefit Life Insurance Company et als, and said:

Page 15:

". . . Specifically, the Stipulation provides . . . . . **discharge of all liability due or to become due under OR IN CONNECTION WITH that certain note executed by National Securities, Inc.** . . . . .

• • • • •

Page 16:

"In the event that the novations above described were

16. Named in the NEW ORLEANS MAGAZINE article referred to in Note 3.
17. Exhibit "K."
18. Exhibit "L."
19. Exhibit "J."

not effective, then the Stipulation further specifically provides that the note . . . should be marked "paid in full." " (Emphasis ours)

Because of such stipulations, the Master recommended dismissal of the Action, and on December 2, 1974, the District Court entered summary judgment in favor of American Benefit et als. **Thus, another suit, this time directly against American Benefit, in the amount of $2,350,000.00, was eliminated!**

The appointment of a state-court receiver for a corporation which is in bankruptcy, appears to be an additional "act of bankruptcy" under the Act![20] Pretermitting this, the status accorded the receiver by the Master, in his Report in CA 72-222, is significant:

Page 27:

"Based on the above findings of fact, it is clear that either American Benefit Life Insurance Company or (the individual referred to in Notes 1, 2, 3, and 6 herein), or both, **are the real parties at interest as plaintiffs in this litigation. It follows that if plaintiff makes a recovery . . . , the recovery would inure to the benefit of American Benefit, or both.**

The fact that American Benefit acquired its shares in the plaintiff, First Colonial, under a Reinsurance Agreement . . . does not alter the fact **that a recovery would be a windfall profit to American Benefit.**

• • • • •

Page 29:

"If Alabama National policyholders are to receive

20. Sec. 3a(5) of the Bankruptcy Act (11 USCA 21a(5).

a benefit, it is so indirect and so much subject to the control of American Benefit, that it is ridiculous to argue that it is the Alabama National policyholders, rather than American Benefit, who will receive the benefit of any recovery in this action.

What would be done with any money recovered herein is clearly subject to the discretion of American Benefit Life Insurance Company . . . . ." (Emphasis and in parentheses ours)

On the basis of *Bangor Punta Operations, Inc. v. Bangor & Aroostook RR Co.,* (1974) 417 U.S. 703, 41 L.Ed. 2d 418, 94 S.Ct. 2578, the Master recommended dismissal against all of the defendants with prejudice! **Thus, another suit directly against American Benefit, in the amount of $443,672.00, was eliminated!**

Civil Action 72-233 suffered substantially the same fate as 72-222. In his Report the Master said:

Page 5:

"At the conclusion of the hearing on July 29, 1974, the Special Master stated that after consideration of the various pleadings filed, and the opposition thereto, the motions for summary judgment based upon the Bangor Punta defense would be maintained."

Thereafter, it appears that all or substantially all of the remaining Defendants in CA 72-233 moved for summary judgment in their favor, which motions and judgments were in due course GRANTED. **Thus, the last suit seeking recoveries of $2,481,149.20 in behalf of First Colonial, was eliminated!**

The substituted Plaintiff appears not to have filed any Appeal to the Fifth Circuit in 72-233, and, of course, he could not have appealed in 72-97 or 72-236, since these actions were voluntarily dismissed! Trustee says nothing further in this statement of the case!

THE QUESTIONS PRESENTED FOR REVIEW AND THE DIRECT AND CONCISE ARGUMENT ON EACH QUESTION, AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT ARE:

QUESTION #1 DOES THE DECISION CREATING "STANDING" FOR AMERICAN BENEFIT CONFLICT WITH INNUMERABLE DECISIONS OF THE SUPREME COURT, THE UNITED STATES COURTS OF APPEALS **INCLUDING** THE FIFTH CIRCUIT, THE BANKRUPTCY ACT, AND RULES OF BANKRUPTCY PROCEDURE?

In law school, Dean Roscoe Pound expounded a principle which he later set forth in one of his works:

"In this stage of matured legal system, the watchwords are equality and security. The idea of equality is derived partly from the insistence of equity and natural law. . . . . **Partly, also, it is derived from the insistence of the strict law that the same remedy shall always be applied to the same state of fact.** Accordingly, as used here, equality includes two things: (1) **Equality of operation of legal precepts**, and (2) equality of opportunity to exercise one's faculties and to employ one's substance." (Emphasis ours) (Roscoe Pound, JURISPRUDENCE V. 1 Page 422)

The writer respectfully submits that this principle has been shredded into oblivion, for ——

In order to create "standing" for American Benefit, the Fifth Circuit has disregarded, abrogated, and nullified mandatory requirements thereof, as enunciated by the United States Supreme Court through the words of:

First: The late Mr. Justice JACKSON in *Doremus v. Board of Education* (1952) 342 U.S. 429 72 S.Ct. 394, **397-398:**

> "It is not a question of motivation but of **possession of the requisite financial interest that is, or is threatened to be, injured . . . .**" (Emphasis ours)

Second: Mr. Justice DOUGLAS in *Association of Data Processing Service Organizations, Inc., v. Camp* 397 U.S. 150 90 S.Ct. 827, **829-830:**

> "(2) Generalizations about standing to sue are largely worthless as such. **One generalization is, however, necessary and that is that the question of standing in the federal courts is to be considered in the framework of Article III which restricts judicial power to "cases" and "controversies."**
>
> • • • • •
>
> "The question of standing . . . concers, apart from the "case" or "controversy" test, the question whether **the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.**
>
> • • • • •

> "Apart from Article III jurisdictional questions, problems of standing, as resolved by this Court for its own governance, have involved a "rule of self-restraint." *Barrows v. Jackson*, 346 U.S. 249, 255, 73 S.Ct. 1031, 1034, 97 L.Ed. 1586." (Emphasis ours)

Third: Mr. Justice STEWART in *Sierra Club v. Morton* 405 U.S. 727, 31 L.Ed.2d 636, 92 S.Ct. 1361, **1364, 1368:**

> "Whether a party has sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue. Where the party does not rely on any specific statute authorizing invocation of the judicial process, the question of standing depends upon whether the party has alleged such a "personal stake in the outcome of the controversy," *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L. Ed.2d 663, as to ensure that "the dispute sought to be adjudicated will be presented in an adversary contex and in a form historically viewed as capable of judicial resolution." *Flast v. Cohen*, 392 U.S. 83, 101, 88 S.Ct. 1942, 1953, 20 L. Ed.2d 947."
>
> • • • • •
>
> **". . . a mere "interest in a problem," no matter how long standing the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" . . . . ."** (Emphasis ours)

Fourth: Mr. Justice MARSHALL in *Linda R. S. v. Richard D. and Texas* 410 U.S. 614, 35 L. Ed.2d 536, 93 S.Ct. 1146, **1148-1149:**

• • • • •

"Before we can consider the merits of appellant's claim or the propriety of the relief requested, appellant must first demonstrate that she is entitled to invoke the judicial process. She must, in other words, show that the facts alleged present the court with a "case or controversy" in the constitutional sense and that she is a proper plaintiff to raise the issues sought to be litigated. The threshold question which must be answered is whether the appellant has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, 360 U. S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962).

"[1-3] Recent decisions by this Court have greatly expanded the types of "personal stake[s]" which are capable of conferring standing on a potential plaintiff. (Authorities omitted) But as we pointed out only last Term, "broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury." Sierra Club v. Morton, 405 U.S. 727, 738, 92 S.Ct. 1361, 1368, 31 L.Ed. 2d 636 (1972). Although the law of standing has been greatly changed in the last 10 years, **we have steadfastly adhered to the requirement that, at least in the absence of a statute expressly conferring standing, federal plaintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.** See, *e. g.*, Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 166-167, 92 S.Ct. 1965, 1968, 32 L.Ed.2d 627 (1972); Flast v. Cohen, 392 U.S. 83, 101, 88 S.Ct. 1942, 1953, 20 L.Ed.2d 947 (1968); Baker v. Carr, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1963). *Cf.* Laird v. Tatum, 408 U.S. 1, 13, 92 S.Ct. 2318, 2325, 33 L.Ed.2d 154 (1972).

"[4] Applying this test to the facts of this case, we hold that, . . . appellant has failed to allege a sufficient nexus between her injury and the . . . action which she attacks to justify judicial intervention. To be sure, appellant no doubt suffered an injury . . . . . But the bare existence of an abstract injury meets only the first half of the standing requirement. "The party who invokes [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some **direct** injury . . ." Massachusetts v. Mellon, 262 U.S. 447, 488, 43 S.Ct. 597, 601, 67 L.Ed. 1078 (1923) (emphasis added). See also Ex parte Levitt, 302 U.S. 633, 634, 58 S.Ct. 1, 82 L.Ed. 493(1937). As this Court made plain in Flast v. Cohen, *supra*, a plaintiff must show "a logical nexus between the status asserted and the claim sought to be adjudicated. . . . Such inquiries into the nexus between the status asserted by the litigant and the claim he presents are essential to assure that he is a **proper and appropriate party to invoke federal judicial** power." 392 U.S., at 102, 88 S.Ct., at 1953."
(Footnotes omitted) (Emphasis ours)

Fifth: Mr. Justice STEWART in *United States v. Students Challenging Regulatory Agency Procedures* (*Scrap*) 412 U.S. 669, 37 L.Ed.2d 254, 93 S.Ct. 2405, **2416:**

"(4) Of course, pleadings must be something more than an ingenious academic exercise in the conceivable. A Plaintiff must allege that he has been or will in fact be perceptibly harmed by the challenged . . . action, **not that he can imagine circumstances in which he could be affected . . .**" (Emphasis ours)

Sixth: Mr. Justice WHITE in *O'Shea v. Littleton* 414 U.S. 488, 38 L.Ed.2d 674, 94 S.Ct. 669, **675-676:**

I

"[1-6] We reverse the judgment of the Court of Appeals. The complaint failed to satisfy the threshold requirement imposed by Art. III of the Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy. Flast v. Cohen, 392 U.S. 83, 94-101, S.Ct. 1942, 1949-1953, 20 L.Ed.2d 947 (1968); Jenkins v. McKeithen, 395 U.S. 411, 421-425, 89 S.Ct. 1843, 1848-1851, 23 L.Ed.2d 404 (opinion of Marshall, J.). Plaintiffs in the federal courts "must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." Linda R. S. v. Richard D., 410 U.S. 614, 617, 93 S.Ct. 1146, 1148, 35 L.Ed.2d 536 (1973). There must be a "personal stake in the outcome" such as to "assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, 369 U.S. 186, 204, S.Ct. 691, 703, 7 L.Ed.2d 663 (1962). Nor is the principle different where statutory issues are raised. Cf. United States v. SCRAP, 412 U.S. 669, 687, 93 S.Ct. 2405, 2415, 37 L.Ed.2d 254 (1973). Abstract injury is not enough. It must be alleged that the plaintiff "has sustained or is immediately in danger of sustaining some direct injury" as the result of the challenged statute or official conduct. Massachusetts v. Mellon, 262 U.S. 447, 488, 43 S.Ct. 597, 601, 67 L.Ed. 1078 (1923). The injury or threat of injury must be both "real and immediate," not "conjectural" or "hypothetical." Golden v. Zwickler, 394 U.S. 103, 109-110, 89 S.Ct. 956, 960, 22 L.Ed.2d 113 (1969); Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 273, 61 S.Ct. 510, 512, 85 L.Ed. 826 (1941), United Public Workers v. Mitchell, 330 U.S. 75, 89-91, 67 S.Ct. 556, 564-565, 91 L.Ed. 754 (1947). Moreover, if none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none

may seek relief on behalf of himself or any other member of the class. Bailey v. Patterson, 369 U.S. 31, 32-33, 82 S.Ct. 549, 550-551, 7 L.Ed.2d 512 (1962); Indiana Employment Division v. Burney, 409 U.S. 540, 93 S.Ct. 883, 35 L.Ed.2d 62 (1973) See 3B Moore's Federal Practice, Par. 23.10-1, n. 8 (2d ed. 1971)." (Footnotes omitted)

Seventh: Mr. Chief Justice BURGER in *Schlesinger v. Reservists Committee to Stop the War.* 418 U.S. 208, 41 L. Ed.2d 706, 94 S.Ct. 2925, **2932-2935:**

"We reaffirm that standing to sue may not be predicated upon an interest of the kind alleged here which is . . . . necessarily abstract . . . . Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution. **It adds the essential dimension of specificity to the dispute by requiring that the complaining party have suffered a particular injury caused by action challenged as unlawful.** This personal stake is what the Court has consistently held enables a complainant authoritatively to present to a court a complete perspective upon the adverse consequences flowing from the specific set of facts undergirding his grievance. Such authoritative presentations are an integral part of the judicial process, for a court must rely on the parties treatment of the facts and claims before it to develop its rules of law. Only concrete injury presents the factual context within which a court, aided by parties who argue within the context, is capable of makdecisions. • • • • • • • •

First, concrete injury removes from the realm of speculation whether there is a real need to exercise the power of judicial review in order to protect the interests of the complaining party.

"The desire to obtain [sweeping relief] cannot be

accepted as a substitute for compliance with the general rule that the complainant must present facts sufficient to show that his individual need requires the remedy for which he asks." McCabe v. Atchison, T. & S. F. R. Co., 235 U.S. 151, 164, 35 S.Ct. 69, 72, 59 L.Ed. 169 (1914).

Second, the discrete factual context within which the concrete injury occurred or is threatened insures the framing of relief no broader than required by the precise facts to which the court's ruling would be applied.

* * * * *

To permit a complainant who has no concrete injury to require a court to rule on important . . . issues in the abstract would create the potential for abuse of the judicial process. . . .

* * * * *

"It is one thing for a court to hear an individual's complaint that certain specific . . . action will cause that person private competitive injury, Association of Data Processing Service Organization, Inc. v. Camp, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970) . . . **but it is another matter to allow a citizen to call on the courts to resolve abstract questions.** The former provides the setting for a focused consideration of a concrete injury. In the latter, . . . **it can be only a matter of speculation whether the claimed violation has caused concrete injury to the particular complainant.**

* * * * *

To support standing there must be concrete injury in a form which assures "the necessary specificity" called for by *Flast*, 392 U.S., at 106, 88 S.Ct., at 1955, and "that

concrete adverseness . . . upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, *supra*, at 204, 82 S.Ct., at 703.

". . . the essence of standing

> "is not a question of motivation but of possession of the requisite . . . interest that is, or is threatened to be, injured . . . Doremus v. Board of Education, 342 U.S. 429, 435, 72 S.Ct. 394, 397, 96 L.Ed. 475 (1952).

This same theme as to the inadequacy of motivation to support standing is suggested in the Court's opinion in *Sierra Club, supra.*

> "But a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' . . . 405 U.S., at 739, 92 S.Ct., at 1368.

Respondents' motivation has indeed brought them sharply into conflict which petitioners, but as the Court has noted, **motivation is not a substitute for the actual injury needed by the courts and adversaries to focus litigation efforts and judicial decision making.**

* * * * *

Such a generalized interest, however, is too abstract to constitute a "case or controversy" appropriate for judicial resolution.

* * * * *

[7] Closely linked to the idea that generalized citizen

interest is a sufficient basis for standing was the District Court's observation that it was not irrelevant that if respondents could not obtain judicial review of petitioners' action, "then as a practical matter no one can."

• • • • •

The assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing. See United States v. Richardson, 418 U.S., and 179, 94 S.Ct., at 2947.

(Emphasis ours) (footnotes omitted)

Eighth: Mr. Chief Justice BURGER in *United States v. Richardson* 418 U.S. 166, 41 L.Ed.2d 678, 94 S.Ct. 2940, **2948:**

"[6] As our society has become more complex, our numbers more vast, our lives more varied, and our resources more strained, citizens increasingly request the intervention of the courts on a greater variety of issues than at any period of our national development. The acceptance of new categories of judicially cognizable injury has not eliminated the basic principle that to invoke judicial power the claimant must have a "personal stake in the outcome," Baker v. Carr, *supra*, at 204, 82 S.Ct., at 703, or a "particular, concrete injury," Sierra Club, *supra*, 405 U.S., at 740-741, n. 16, 92 S.Ct., at 1369, or "a direct injury," Ex parte Levitt, *supra*, 302 U.S., at 634, 58 S.Ct., at 1; in short, something more than "generalized grievances," Flast, *supra*, 392 U.S., at 106, 88 S.Ct. 1956. Respondent has failed to meet these fundamental tests; accordingly, the judgment of the Court of Appeals is reversed."

Ninth: Mr. Justice POWELL, concurring in *Richardson*, supra, 94 S.Ct. at pages **2954-2955:**

". . . we risk a progressive impairment of the effectiveness of the federal courts if their limited resources are diverted increasingly from their historic role . . .

"The irreplaceable value of the power articulated by Mr. Chief Justice Marshall lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action. It is this role . . . . . that has maintained public esteem for the federal courts and has permitted the peaceful coexistence of the counter-majoritarian implications of judicial review and the democratic principles upon which our Federal Government in the final analysis rests. • • • • • • •

"To be sure, standing barriers have been substantially lowered in the last three decades.

• • • • •

Even in the absence of specific statutory grants of standing, economic interests that at one time would not have conferred standing have been re-examined and found sufficient. (Authorities omitted.)

"The concept of particularized injury has been dramatically diluted. E. g., United States v. SCRAP, 412 U.S. 669, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973).

"The revolution in standing doctrine that has occurred, particularly in the 12 years since Baker v. Carr, *supra*, has not meant, however, that standing barriers have disappeared altogether. As the Court noted in *Sierra Club* "broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury." 405 U.S., at 738, 92 S.Ct., at 1368. Accord, Linda R. S. v. Richard

D., 410 U.S. 614, 617, 93 S.Ct. 1146, 1148, 35 L.Ed.2d 536 (1973). Indeed, despite the diminution of standing requirements in the last decade, the Court has not broken with the traditional requirement that, in the absence of a specific statutory grant of the right of review, a plaintiff must allege some particularized injury that sets him apart from the man on the street." (Footnotes omitted) (Emphasis ours)

Tenth: Mr. Justice BLACKMUN in *Bigelow v. Virginia* (1975) 95 S.Ct. 2222, 2230:

"[4-6] Of course, in order to have standing, an individual must present more than "allegations of a subjective chill. There must be a "claim of specific present objective harm or a threat of specific future harm." Laird v. Tatum, 408 U.S. 1, 33 L.Ed.2d 154, 92 S.Ct. 2318, 2326."

Eleventh: Mr. Justice POWELL in *Warth v. Seldin* (1975) 95 S.Ct. 2197, **2205-2206:**

"[1, 2] We address first the principles of standing relevant to the claims asserted . . . . . In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise. *E. g.*, Barrows v. Jackson, 346 U.S. 249, 255-256, 73 S.Ct. 1031, 1034-1035, 97 L.Ed. 1586 (1953). In both dimensions it is founded in concern about the proper—and properly limited—role of the courts in a democraic society. See Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 221-227, 94 S.Ct. 2925, 2932-2935, 41 L.Ed.2d 706 (1974); United States v. Richardson, 418 U.S. 166, 188-197, 94 S.Ct. 2940,

2952-2956, 41 L.Ed.2d 678 (1974) (Powell, J., concurring).

[3-7] **In its constitutional dimension, standing imports justiciability:** whether the plaintiff has made out a "case or controversy" between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit. As an aspect of justiciability, the standing question is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" to warrant *his* invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf. Baker v. Carr, 369 U.S. 186, 204 82 S.Ct. 691, 703, 7 L.Ed.d 663 (1962). The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered "some threatened or actual injury resulting from the putatively illegal action . . ." Linda R. S. v. Richard D., 410 U.S. 614, 617, 93 S.Ct. 1146, 1148, 35 L.Ed.d 536 (1973). See Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 151-154, 90 S.Ct. 827, 829-830, 25 L.Ed.d 184 (1970).

[8, 9] Apart from this minimum constitutional mandate, this Court has recognized other limits on the class of persons who may invoke the courts' decisional and remedial powers. First, the Court has held that when the asserted harm, is a "generalized grievance" shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction. *E. g.*, Schlesinger v. Reservists Comm. to Stop the War, *supra*; United States v. Richardson, *supra*, Ex parte Levitt, 302 U.S. 633, 634, 58 S.Ct. 1, 82

L.Ed. 493 (1937). Second, even when the plaintiff has alleged injury sufficient to meet the "case or controversy" requirement, this Court has held that the plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties. *E. g.*, Tileston v. Ullman, 318 U.S. 44, 63 S.Ct. 493, 87 L.Ed. 603 (1943). See United States v. Raines, 362 U.S. 17, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960); Barrows v. Jackson, *supra*. Without such limitations—closely related to Art. III concerns but essentially matters of judicial self-governance—the courts would be called upon to decide abstract questions. See, e. g., Schlesinger v. Reservists Comm. to Stop the War, 418 U.S., at 222, 94 S.Ct., at 2932. Essentially, the standing question in such cases is whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." (Emphasis ours)

In order to create "standing" for American Benefit as a mere **stockholder** in bankrupt, the Fifth Circuit not only abrogates all of the authorities of the United States Supreme Court previously cited, but its own decisions as well, namely: *Stone v. Huffstutler* (5th Cir. 1955), 227 F.2d 217; *Manda v. Sinclair* (5th Cir. 1960), 278 F.2d 629; *Edell v. DePiazza* (5th Cir. 1965), 345 F.2d 336; *Imperial Bowl of Miami v. Roemelmeyer* (5th Cir. 1966), 368 F.2d 323; *Cahn v. Nicholas* (5th Cir. 1971), 453 F.2d 528—ALL of which are in **dire conflict** with the instant decision on the issue of "standing."

In addition, the instant decision is in direct conflict with the established rules of other Circuits, namely: *Castaner v. Mora* (1st Cir. 1954), 216 F.2d 189; *Matter of Realty Foundation, Inc.* (2nd Cir. 1935), 65 F.2d 286; *In re Advocate* (2nd Cir. 1944), 140 F.2d 783; *In re U. S. Overseas Airlines, Inc.*

(3rd Cir. 1969), 419 F.2d 932; *In re Sunningdale Country Club* (6th Cir. 1965), 351 F.2d 139; *Wells v. Dickinson* (6th Cir. 1968), 403 F.2d 635; *In re Van Sweringen* (6th Cir. 1950), 180 F.2d 119; *Hartman Corporation of America v. United States* (8th Cir. 1962), 304 F.2d 429; *Rogers v. Bank of America National Trust & Savings Association* (9th Cir. 1944), 142 F.2d 128; *Skeleton v. Clements* (9th Cir. 1969), 408 F.2d 353; *In re Greenbaum* (E.D. Pa. 1945), 62 F. Supp. 769.

IN DIRECT CLASH WITH ALL OF THE FOREGOING AUTHORITIES, THE INSTANT DECISION IS PERHAPS THE ONLY ONE OF ITS KIND IN THE UNITED STATES, ALLOWING "STANDING" IN BEHALF OF A STOCKHOLDER **OF A BANKRUPT CORPORATION!**

Against this formidable array of authorities, the courts have engrafted **one** exception, illustrated by such cases as: *Abel v. Campbell* (5th Cir. 1964), 334 F.2d 339; *Rutas . . . (RANSA) v. United States* (5th Cir. 1967), 373 F.2d 213; *Menick v. Hoffman* (9th Cir. 1953), 205 F.2d 365; *Caldwell v. Armstrong* (19th Cir. 1965), 342 F.2d 485.

Such cases, usually predicated under Sections 6871/73 of the Internal Revenue Code,[21] stand for the proposition summed up by Judge WISDOM in *Abel*, supra:

> "Because the . . . liability survives the adjudication in bankruptcy, the **bankrupt** has standing to attack . . . and a right to appeal an averse judgment as would an ordinary creditor under Chapter 6 of the Bankruptcy Act . . ." (Emphasis ours) 334 F.2d 339, *341*

Even with the wildest stretch of imagination, the writer

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21. 26 USCA 6871/73.

cannot surmise ANY applicability of these exceptions to the case at bar!

First: American Benefit does **not** allege that IRS or any other taxing authority, has made any assessments of taxes against First Colonial, and indeed they have not!

Second: American Benefit does **not** contend that IRS or any other taxing entity, has filed any Proof of Claim for taxes with the Bankruptcy Court. Indeed, they have not!

Third: American Benefit does **not** contend that the trustee is refusing to pay any tax **or other liability** which American Benefit would have to discharge in default of such payment, and indeed there is **not** any refusal to pay!

Fourth: Even **IF** IRS or other taxing authorities had made such assessment . . .

Even **IF** such entities had filed Proofs of Claim with the Court . . .

Even **IF** the trustee were refusing to pay . . .

it is **impossible** to surmise how this could be to the detriment of American Benefit! **They do not contend that they had the status of parties against whom any such transfer of assessments of liabilities could be had!**

In the *Abel*, *Rutas*, *Menick*, and *Caldwell* cases, supra, and in others of similar category, the courts appear to make a distinction between a "Bankruptcy Fund" concept, and a "Non-Bankruptcy Fund" concept, namely:

In *Abel*, *Rutas*, and *Menick*, supra, there was a "Bankruptcy Fund," and in *Caldwell* there was a "potential" fund of the same nature. Only where there was danger of forced payment out of the "**Non-Bankruptcy Fund**" did the courts allow standing to the **bankrupt** to complain!

Pretermitting the question whether a **stockholder** should have the status of a **bankrupt,** inherent weakness of the position of American Benefit is reflected in the drastic extension of "standing" enunciated by the Fifth Circuit, for:

A) Every time either a trustee or the Bankruptcy Court would determine matters pertaining to **Ordinary** Creditors . . .

B) or **Secured** Creditors . . .

C) or **Priority** Creditors . . .

D) or **Compromise and Settlement** under the Act . . .

E) or **Taxes on which the stockholder would NOT be liable** . . .

F) or sought to **dispose of property**, real or personal . . .

. . . then a **stockholder** would have standing to complain and appeal, since the "Bankruptcy Fund" would be affected. ETC. ETC. ETC. ETC. In fact, it is difficult to visualize ANY action that the Bankruptcy Court or trustee might take, on which a **stockholder** could not complain and appeal, **IF** that **stockholder** is recognized as having standing and/or interest in the "Bankruptcy Fund" to complain and appeal! Section 70 of the Bankruptcy Act (11 USCA 110) vests title to the assets in the **trustee**—NOT a **stockholder** of the bankrupt! See also: Sec. 58a. (11 USCA 94a.) and RULE 203(a) RBP!

QUESTION #2 IS THE INSTANT DECISION OF THE UNITED STATES COURT OF APPEALS IN DIRECT CONFLICT WITH *Bangor Punta Operations, Inc. v. Bangor & Aroostook Railroad Company* (1974), 417 U.S. 703, 41 L.Ed. 2d 418, 94 S.Ct. 2578?

In all due deference to the decision of the Fifth Circuit, it would be most difficult to surmise a more emphatic conflict therewith! As previously pointed out herein, the Special Master recommended that the District Court dismiss two (2) of the suits taken over, because American Benefit was then deemed to be the real party in interest as party Plaintiffs, and any decision in their favor would have done violence to the "anti-windfall" rule enunciated![22] In the instant matter, this was also the view of the District Judge (Tr. 26, 30) and Bankruptcy Judge (Tr. 208). Thus, in essence, the Fifth Circuit has reversed not only the District Judge, and Bankruptcy Judge, but by implication, the Special Master. Yet, to employ an expression attributable to Law Professor Edward Henry WARREN: There is not a "weak, meek, peep" mention of *Bangor*, supra, in the Opinion of the Fifth Circuit! Just "how" that Court reconciled its decision with *Bangor*, is something of a mystery!

Ironically, American Benefit has employed the "anti-windfall" doctrine of *Bangor* in defense of an action brought against them in the United States District Court for the Eastern District of Louisiana.[23] The writer quotes directly from the brief of American Benefit filed therein:

"The reasoning behind this principle is that **such a shareholder would realize a windfall if the corporation recovered in the action** . . . to permit such an action could result in the shareholder recouping a large part of the purchase price notwithstanding the fact that he had received all that he bargained for and could result in the shareholder **reaping a profit from wrongs done to others.**" (Emphasis ours)

22. Part III of *Bangor*, supra. 94 S.Ct. at pages *2585-2586*.

23. *Bankers Union Life Insurance Company v. American Benefit Life Insurance Company, et als*, Docket No. 74-1449 — referred to previously.

In the words of Mr. Justice POWELL in *Warth*, supra:[24]

"(3-7) In its constitutional dimension, standing imports justiciability . . ."

Thus, having been prevented from avoiding the "anti-windfall" doctrine through the "front door," that is, through take-over of the plenary suits, American Benefit is now attempting to gain access through the "back door," that is, gain control of any residue which may result from the termination of the Bankruptcy Proceedings!

QUESTION #3 IS THE INSTANT DECISION OF THE UNITED STATES COURT OF APPEALS IN SQUARE CONFLICT WITH SEC. 13(d) OF THE SECURITIES EXCHANGE ACT OF 1934 (15 USCA 78m(d)) AND ITS COUNTERPART IN RULE 13d-1 OF THE SECURITIES AND EXCHANGE COMMISSION (17 CFR 240.13d-1)?

Copies of stock certificates in the record show a Mid-1970 transfer date of the First Colonial stock to American Benefit. The Special Master found that the latter procured its shares as of March 31, 1970. Thus: American Benefit could have requested, under their impressive power, permission from the Bankruptcy Court, AS FAR BACK AS 1970, to assume all

24. 95 S.Ct. at page *2205*.

responsibilities to the bankrupt estate and its Creditors and ALL stockholders — terminate the bankruptcy proceeding — and take over as the **majority** stockholder (with all responsibilities being theirs thereafter).

AMERICAN BENEFIT DID **NOT** DO THIS! WHY? The writer submits the answer may lie within the formidable terms of Sec. 13(d) of the Securities Echange Act of 1934 and its counterpart in Rule 13d-1 of the Securities and Exchange Commission, which Section requires filing with the SEC "**within ten days after such acquisition**" of the following pertinent information:

> "(A) the background and identity of all persons by whom or on whose behalf the purchases have been or are to be effected;
>
> "(B) **the source and amount of the funds or other consideration used or to be used in making the purchases,** . . .
>
> "(C) **IF the purpose of the purchase or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major changes in its business or corporate structure**;
>
> "(D) the number of shares of such security which are beneficially owned, . . . and
>
> "(E) **information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer**. . . ." (Emphasis ours)

According to the record before the Fifth Circuit, American Benefit had not filed any report under Sec. 13(d) with the SEC for approximately 2 years after acquisition of their stock, and, within the information presently available to the writer, may not have filed any report up to the present time. Yet, because of this ownership of stock, American Benefit has:

1. Procured the appointment of a state-court "receiver" for First Colonial Corp. of America.[25]

2. Then, in cases wherein it was deemed to be the real party in interest, suffered or permitted DISMISSAL of Actions filed in behalf of First Colonial Corp. of America, in the aggregate amount exceeding $7,000,000.00 of dollars, **of which $4,834,503.97 had been sought directly against American Benefit and/or an entity within the American Benefit Complex!**

Such actions could, conceivably, be of benefit to American Benefit or the American Benefit Complex! **However, could they be of ANY possible benefit to First Colonial Corp. of America?** WERE THESE ACTIONS EVER REPORTED BY AMERICAN BENEFIT TO THE SECURITIES AND EXCHANGE COMMISSION?

Additionally, the status of the "ownership" by American Benefit, of the First Colonial stock, has proved to be quite interesting. Before the Fifth Circuit, American Benefit said that[26]

> ". . . **the Alabama National receivership is the owner of**

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25. See Note 14, supra.
26. Art. 6 of their PETITION FOR ALLOWANCE.

the majority stock in First Colonial Corp. of America."
(Emphasis ours)

As previously pointed out, however, the Master found in his Reports that American Benefit acquired its shares in First Colonial under a Reinsurance Agreement which was filed in the record. REFERENCE TO THIS REINSURANCE AGREEMENT SHOWS THAT AMERICAN BENEFIT PAID NOT A DIME FOR THIS STOCK! Was the Securities and Exchange Commission ever apprised of this fact?

It is argued, however, that American Benefit is now absolved of any necessity to file reports because of a recent decision of the United States Supreme Court![27] The writer respectfully disagrees. In this decision Mr. Chief Justice BURGER was careful to point out:[28]

> "The narrow issue before us is whether this record supports the grant of injunctive relief, a remedy whose basis "in the federal courts has always been irreparable harm and inadequacy of legal remedies." Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 506-507, 79 S.Ct. 948, 954, 3 L.Ed.2d 988 (1959)."

Additionally, the drastic difference in the fact situation between the instant case and *Mosinee*, supra, should not be overlooked!

In *Bath Industries, Inc. v. Blot* 305 F. Supp 526, **537-539**, affirmed on appeal in 427 F2d 97 (CA 7th 1970), and *GAR Corp. v. Milstein* 324 F. Supp 1062 (1971), reversed in 453

27. RONDEAU V. MOSINEE PAPER CORPORATION (1975), 95 S.Ct. 2069.
28. 95 S.Ct. at page 2075.

F2d 709 (CA2d 1971), stock owners were **enjoined** from exercising privileges of ownership because of non-filing or inadequate filing of Schedule 13D! **There appears nothing in the language of Mr. Chief Justice BURGER which would in any manner conflict with either Blot or Milstein, supra!**

Although the failure of American Benefit to file under Sec. 13(d) and/or Rule 13d-1 was raised before the District Court (Tr. 10-13) and in briefs before the Fifth Circuit—again—there is not a "weak, meek, peep" of mention of Sec. 13(d), or Rule 13d-1, or *Blot,* or *Milstein,* in the opinion of the Fifth Circuit! Because of this, the writer presumes that his position on these issues are correct!

QUESTION #4 DID THE UNITED STATES COURT OF APPEALS COMMIT FUNDAMENTAL ERROR IN DECREEING THAT "INTERVENTION" PER SE CREATES "STANDING"?

In all due deference to the Court of Appeals, this error borders on the fantastic, for, insofar as Dean POUND's "equality of operation of legal precepts" is applicable, **every** Federal District Judge hereafter has it within his power to abrogate and nullify the Supreme Court decisions in *Doremus, Sierra Club, Linda, (SCRAP), Littleton, Schlesinger, Richardson, Bigelow,* and *Warth,* all cited supra, through the simple expedient of allowing "Intervention"!

Suffice to say the instant decision is in direct and emphatic conflict with *Rogers v. Bank of America National Trust & Savings Association* (9th Cir. 1944), 142 F.2d 128, *129* wherein the Court said:

"(4) The bank argues that because it was served with

notice of the hearing . . . filed objections, and took an active part therein, it is now entitled to review the order resulting. None of the cases . . . suggest that merely because a person is allowed to participate in a hearing . . . he may petition for review even though he has no direct interest in the order to be reviewed. **Such a conclusion would be directly contrary to (the Bankruptcy Act) and cannot be supported.**" (Emphasis and () ours)

The only authority cited by the Fifth Circuit in support of its proposition is *Klein v. Nu-Way Shoe Co., Inc.*, (2nd Cir. 1943), 136 F.2d 986. The proposition appears to be that Intervention, if not appealed, *per se* creates standing!

Careful review of *Klein*, supra, shows it does NOT stand for the proposition cited. The "appeal" referred to therein was a referenced appeal from an order appointing a *Federal Receiver*, viz:

"* * * * * Judge Bondy, after a hearing and after receiving briefs, rejected the contention and on April 16, 1942 made Lipton a Federal Receiver in Bankruptcy for the corporation. **No appeal was taken from this determination.**" 136 F.2d 986, *988* (Emphasis ours)

—NOT an appeal from an Order Allowing Intervention!

Further, insofar as *Klein* could be interpreted to mean that trustee should have *appealed* from the Order allowing American Benefit to Intervene, *Klein* would be **overruled** by the later Second Circuit decision of *Otten v. Baltimore & O. R.R.* (2nd Cir. 1953), 205 F.2d 58, holding squarely that an Order **allowing** Intervention is **not** appealable! To the same effect is *Kris Petroleum, Ltd. v. Stoddard* (9th Cir. 1955), 221

F.2d 801. On the basis of these authorities, Moore's Federal Practice states the rule:[29]

"* * * * * it is clear that a district court order **allowing** intervention is not a final order and **is not appealable** as such." (Emphasis ours)

Further, it should be pointed out that the instant decision is in direct conflict with ALLEN CALCULATORS, INC. V. NATIONAL CASH REGISTER CO. (1944) 322 U.S. 137, 64 S.Ct. 905[30] wherein this Court said:

"(3,4) The appellant had standing to invoke the discretion of the district court to permit it to intervene. . . ." (64 S.Ct. at *907*)

Thus, it is the PREREQUISITE of "standing" which affords the right to Intervene—NOT that Intervention "creates" standing! Were it otherwise, all Bankruptcy Judges could create "standing" in violation of the Bankruptcy Act and Rules of Bankruptcy Procedure, and all District Judges could create "standing" in total disregard of ALL Supreme Court authorities previously cited—BY THE SIMPLE EXPEDIENT OF ALLOWING INTERVENTION, as against which any adverse party could NOT Appeal! THE WRITER RESPECTFULLY SUBMITS THIS IS **NOT** THE LAW!

In fairness to the Bankruptcy Judge, it should be pointed out that within the time frame that American Benefit desired to intervene, the Court was considering an offer of settlement from a former President of First Colonial, and American Benefit desired to be heard. Out of an abundance

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29. V. 3B, Par. 24.15, Page 24-561.
30. Rehearing denied 322 U.S. 771, 64 S.Ct. 1257.

of precaution, the Bankruptcy Judge permitted them to intervene, and INTERVENTION WAS ALLOWED THE SAME DATE IT WAS FILED (Tr. 99-101).

Since this matter is **now** on Appeal, out of an abundance of precaution (trustee being without right of prior appeal from the Order), insofar as the Order of the Bankruptcy Court allowing American Benefit to Intervene may be construed as an Order allowing Intervention for **all** purposes, the writer requests that such Order be declared ineffective for the purpose of creating "standing" for American Benefit!

QUESTION #5 IS THE OPINION OF THE COURT OF APPEALS, IN ESSENCE, AN INDIRECT SEVERE ATTACK ON RULE 215(e) OF THE RULES OF BANKRUPTCY PROCEDURE?

Insofar as certain language of the opinion may demonstrate an indirect severe attack by that Court on RULE 215(e) BRP, the only available remedy is protection from this Court.

RULE 215(e) is among the New Rules of Bankruptcy Procedure formulated by this Court and promulgated in its ORDER of April 24, 1973. It provides:

> "(e) **Employment of Trustee or Receiver as Attorney of Accountant.** The court may authorize the trustee or receiver to act as an attorney or accountant for the estate if such authorization is in the best interest of the estate."

A trustee is required to provide **neither** legal **nor** accounting work in behalf of the bankrupt estate.[31] Hence, RULE 215(e) is a companion measure to RULE 215(c) which allows

31. Sec. 47 of the Bankruptcy Act—11 USCA 75.

an Attorney employed by a general creditor of the estate, to represent the estate. Collier on Bankruptcy provides suggested Forms for the Application and Order.[32] While admittedly the practice of employing a trustee to act as Attorney is reserved for unusual cases, **the practice was well recognized within the Fifth Circuit long PRIOR to the advent of the New Rules!**[33] In the instant case, **neither** American Benefit **nor** any Creditor registered the slightest protest against the practice.

In spite of this, strange, harsh, unnecessary, and erroneous observations appear in the Opinion!

First, that:

> ". . . the district court directed the trustee to settle all of the bankrupt's claims for $600,000.00." (Opinion, 70)

In this clearly erroneous observation, the Fifth Circuit violated its own decision in *Massachusetts Mutual Life Insurance Co. v. Brock*, 405 F.2d 429, *422*, which said:

> "(9) With respect to the overall result and the total of the fees sought, we are fortunate in having facts and circumstances not in the record in this case which we may consider . . . **We judicially know from our own court records** . . . IT IS PERMISSIBLE FOR US TO TAKE THESE . . . PROCEEDINGS INTO CONSIDERATION. (citing United States Supreme Court decisions)" (Emphasis and in() ours)

Thus, IF the Fifth Circuit had followed its own precept

32. 14th Ed. V. 5, Pages 4-29 through 4-32.

33. In the Matter of ORBIT LIQUOR STORE (5th Cir. 1971), 439 F.2d 1351.

in *Brock*, supra, (and those of *United States v. California Co-operative Canneries* (1929), 279 U.S. 553, *555*, 49 S.Ct. 423, *424* and *Aspen Mining & Smelting Co. v. Billings* (1893), 150 U.S. 31, *38*, 14 S.Ct. 4, cited in *Brock*) it could easily have determined that the plenary suits were "taken over" rather than being "SETTLED" by trustee, for, CA 72-222 WAS ON APPEAL IN NO. 75-3007![34] Additionally, the Fifth Circuit ordered that the Appeal of Attorney Robinson be heard on the ORIGINAL RECORD,[35] in connection with which the Fifth Circuit instructed the District Court to forward the entire record in CA 72-97 and a related proceeding![36]

Further, trustee implored the Court of Appeals to delimit the bankruptcy record to those matters pertinent to all Appeals, while the American Benefit interests wanted the Appeals based on the ENTIRE RECORD! American Benefit prevailed and the Fifth Circuit **denied** the request of trustee, thereby ordering the Appeals heard on the ENTIRE BANKRUPTCY RECORD![37]

THUS, AT ALL TIMES PERTINENT, THE FIFTH CIRCUIT HAD BEFORE IT THE RECORDS IN CA 72-97, CA 72-222, AND THE ENTIRE BANKRUPTCY RECORD, THROUGH WHICH ITS ERROR COULD EASILY HAVE BEEN DETERMINED! The Court of Appeals had only to refer to Pleading No. 251 filed 6/18/74 to determine that the Bankruptcy Court authorized settlement with ONE party

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34. See: Exhibit O annexed.
35. See: Exhibit M annexed.
36. See: Exhibit N annexed.
37. See: Par. 3 of Exhibit E annexed.

only, in the amount of $600,000.00 plus interest, reserving to trustee ALL rights against ALL other parties (Tr. 52) — NOT an authorization to settle "all of the bankrupt's claims for $600,000.00." ! ! ! Were there any reasons why the Fifth Circuit could not have referred to or noticed these matters?

Second: The Opinion (Pages 79-80) states that one of the Attorneys "merely stated that he had expended" a minimum of 3,992 hours of legal work, and that:

> ". . . one person acts as both trustee and attorney for the trustee AND FAILS TO CLEARLY DISTINGUISH IN HIS PETITION FOR COMPENSATION BETWEEN THE TASKS HE PERFORMED AS ATTORNEY AND THOSE PERFORMED AS TRUSTEE." (Emphasis ours)

Again, in all deference to the Fifth Circuit, it had before it TWO (2) of the plenary suits, the ENTIRE bankruptcy record **AND** the APPENDIX which **included** the entire Docket Sheet of the bankruptcy proceeding (Tr. 42-59) **AND** which Appendix also included that Attorney's Petition for Compensation which not only **specified** his legal services, but **detailed them in 18 lengthy Exhibits numbered i through xviii thereto annexed!** (See: Tr. 150-174)

In spite of all this, the Court of Appeals makes the above charge, yet fails to SPECIFY **even one (1) single item of discrepancy appearing in these records!**

Fourth: The most unjustified language appears on Page 78 of the Opinion wherein the Court states:

> ". . . the possibility that some officers of the court may be furnishing services to the estate in more than one

capacity—which could lead to the award of duplicative fees or compensation for non-legal services if overlooked."

Needless to say, in the field of bankruptcy practice, it is a hideous charge that an Attorney abused and violated his trust in charging a bankrupt estate for non-legal services. The charge is so brutally unfair, un-deserved, and unjust in the case of Mr. Robinson (the Fifth Circuit admits on Page 707 he explained how he spent each hour), that the writer utilizes this particular Attorney for illustration:

A. Mr. Robinson is a former law clerk to the Hon. E. Gordon WEST, and one of the most able trial lawyers in the area.

B. He has NEVER acted as trustee in any bankruptcy proceeding, and certainly did NOT act as trustee in reference to First Colonial.

C. At great personal sacrifice, he consented to act as trial counsel in the **plenary** Civil Action 92-97, at the request of the Bankruptcy Court and trustee, and served in that capacity with diligence.

D. As previously pointed out, on request of the Fifth Circuit, the District Court forwarded **12 BOXES OF RECORDS** to the Court of Appeals containing the ENTIRE ACTIVITIES of Mr. Robinson, pertaining to First Colonial.

Thus, it is clear that the Fifth Circuit had before it for more than a year **prior** to the rendition of the Opinion, ALL of Mr. Robinson's activities. Yet, in that Opinion, there is not an **iota** of mention of "which" services (if any) could possibly constitute "services to the estate in more than one

capacity" ! !! !!! It is somewhat ironic that the Attorneys for the bankrupt estate (none of whom have ever been charged with alleged violations of the Banking Laws, or the laws dealing with Securities) should find themselves charged with possibility of abuse of trust, in a case where the Fifth Circuit fails or declines to support the charge with even a single specification!

The writer respectfully submits that the Court of Appeals abused its great power, in the instant case! Because the Fifth Circuit said (Opinion, 76):

> "Since we hold that the bankruptcy judge and the district court failed to employ the requisite standards and procedures in awarding attorneys fees, we do not examine the soundness of their findings of fact. Nor do we reach the question of whether the amounts awarded were reasonable."

the writer is at a loss to understand "why" it was necessary for the Fifth Circuit to insert considerable harsh, unnecessary, and erroneous observations in its decree! !! A judgment of reversal ordering the District Court to employ requisite standards and procedures could have been accomplished merely on the basis of the language immediately quoted above! !!

Finally, the Court of Appeals makes this startling observation (Opinion, 74):

> ". . . a trustee-attorney's personal interest in the amount of compensation he receives in exchange for his services as attorney leads him to take a position adverse to that of the bankrupt and its shareholders whose interests he is charged with protecting in his role as trustee. Where

the trustee serves as his own attorney there is no disinterested trustee to ensure that the attorney is paid only for professional services necessary to the administration of the estate. In this situation it is unseemly, to say the least, for a trustee-attorney to urge on appeal, first, that the compensation he was awarded for furnishing legal services to the bankrupt estate should be increased, and second, that the bankrupt and its shareholders have no standing to object to the amount of that compensation because the Bankruptcy Act makes safeguarding their interests his responsibility."

Suffice to say that parts of the above appear in direct conflict with what Mr. Chief Justice BURGER said in *Schlesinger*, supra: (94 S.Ct. at Page 2935)

"The assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing. See United States v. Richardson, 418 U.S., at 179, 94 S.Ct. at 2947."

Thus, the observation of the Court of Appeals could hardly justify "standing" in behalf of American Benefit! **The traumatic element, however, is that the Fifth Circuit made its observation in a case where there was NOT A SINGLE FINDING OF FACT concerning any abuse of trust.** Unlike in **Matter of York** (9th Cir. 1975) 527 F.2d 1061 **where there were express findings of substantial abuse**, the Fifth Circuit has denounced ALL trustees who act in the capacity of Attorneys for an estate, by saying in effect:

BEWARE! IF YOU ARE APPOINTED ATTORNEY UNDER RULE 215(e), YOU WILL BE DEEMED TO HAVE AN INTEREST ADVERSE TO BANKRUPT AND ITS SHAREHOLDERS **IF** YOU APPEAL AN AWARD OF FEES, **EVEN THOUGH**:

A) DETERMINATION OF AMOUNT REMAINS UNDER CONTROL OF COURT, **AND**

B) EVEN THOUGH THE LOWER COURTS FAIL TO EMPLOY REQUISITE STANDARDS AND PROCEDURES IN THE DETERMINATION THEREOF!

Obviously, **IF** RULE 215(e) of the Rules of Bankruptcy Procedure is to be saddled with the implications mentioned, that privilege should be reserved to the United States Supreme Court that promulgated the rule—not an Appellate Court! The only alternatives for a trustee-attorney would appear: **Either** accept the erroneous standards and forego rights of Appeal, **or** face a charge of adverse interest! — **AND ABUSE OF TRUST**!

QUESTION #6 IN ORDER TO CREATE "STANDING" FOR AMERICAN BENEFIT, DID THE COURT OF APPEALS REFUSE TO FOLLOW THE MANDATE OF SEC. 57n OF THE BANKRUPTCY ACT (II USCA 93n)?

As previously pointed out in the Statement of the Case, Sec. 57n of the Act mandates that:

"When in any case all claims which have been duly allowed have been paid in full, **claims not filed within the time hereinabove prescribed may nevertheless be filed within such time as the Court may fix** or for cause shown extend and, if duly proved, **shall be allowed against any SURPLUS remaining in such case.**" (Emphasis ours)

This mandate is especially ACUTE here, for:

First: $280,000.00 of "Bassan" Claims (Tr. 136-7) were **not** reflected in the books and record of bankrupt, **even though they were based on "judgments" of a federal district court:**

Second: The records also failed to reflect two (2) $100,-000.00 notes owing **to** bankrupt because (in the explanation of its CPA) they had **neither** been entered in the records **nor** disclosed to the CPA!

Third: **Instead**, the books disclosed commensurate liability OF bankrupt **to** two (2) parties, **each** in the amount of $100,000.00, which liabilities were satisfied prior to bankruptcy! (Apparently the books were "rigged.")

Fourth: The books reflect "purchase" of 20,000 shares of stock, while the Discovery suggests, instead, the 20,000 shares were already owned by the corporation, and **borrowed** for an individual's personal use as security on a loan from a Texas bank!

Fifth: In addition to executing a $250,000.00 note for stock which was not purchased, bankrupt also issued a **SECOND** note in the same amount!

Mention of these factors is for purpose of showing that the books and records of First Colonial can NOT be relied upon, in determining **liabilities**! ONLY A PROPHET COULD SAY HOW MANY CLAIMS (if any) ARE STILL OUTSTANDING, AND MIGHT BE FILED UPON RE-OPENING OF THE PERIOD FOR FILING! (Indeed trustee has wondered if, at some future date, the SECOND $250,000.00 NOTE might not show up as a Claim against the estate!)

In spite of these deficiencies, and without any express finding that there are NOT any further Claims to be filed against the estate, the Court of Appeals nevertheless concludes that First Colonial "is not insolvent." (Opinion, 73)

The net effect of this is that, pretermitting any claim which American Benefit might have to the residue (if any), American Benefit, as a stockholder, is to have "standing" to take part in the further Bankruptcy Administration of the corporation—an unheard of ruling totally without precedent!

QUESTION #7 WHEN AN ATTORNEY IS NOT FOREWARNED BY THE COURT THAT HE WILL BE ORDERED TO "ABANDON" PLENARY LITIGATION, IS *Johnson v. Georgia Highway Express, Inc.* (5th Cir. 1974), 488 F.2d 714, *718* AND ITS EIGHTH FACTOR APPLICABLE HEREIN?

Pretermitting the fact that the Court of Appeals utilized a *Civil Rights* case as the criteria for awards of Attorneys' Fees in a **bankruptcy** case (for which the writer does not interpose objection *per se*), it is obvious that the Court's own concept of a bankrupt estate as:

> ". . . a trust in the possession of persons **completely under the control of the court** in so far as they deal with the property subject to its jurisdiction." (Emphasis ours)[38]

makes *Johnson*, supra, inapplicable to the instant case, for a thorough reading of *Johnson*, and of the Section of the Civil Rights Act under which it is based,[39] **fails to disclose any comparable authorization whereby a Federal District Court might order a Plaintiff to "ABANDON" Litigation under the Act**! Therefore, the writer submits, it is basically **unfair** to

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38. ***Donald v. San Antonio Joint Stock Land Bank*** **(5th Cir. 1938), 100 F.2d 312, *314*.**

39. **Sec. 706(k) of Title VII of the Civil Rights Act of 1964, 42 USCA Sec. 2000e-5(k).**

apply the 8th factor in *Johnson* (Opinion, 80-81) to a case where the Attorneys have been DENIED full access to the Judicial Process!

The Court of Appeals attempts to overcome this in saying (Opinion, 81) that the Bankruptcy Judge "discounted" the possibility of failure of the plenary suits. Again, pretermitting this highly inaccurate statement of events, THAT IS NOT THE QUESTION! **The question is whether the Bankruptcy Court should have as a matter of fairness and justice, forewarned the Attorneys BEFORE they were mis-led into expending their time and efforts on the plenary litigation, that they would be ordered to ABANDON same without opportunity of securing full compensation for services! HAD SUCH DISCLOSURE BEEN MADE, BANKRUPT COULD NOT HAVE OBTAINED A SINGLE ATTORNEY!!!**

Under the strongest emphasis at the writer's command, he assures this Court that the plenary proceedings were instituted in complete good faith on the directives from PEPPER V. LITTON (1938), 308 U.S. 295, *306-307*, 60 S.Ct. 238, *245*, that in event of bankruptcy of a corporation its **trustee** was charged with enforcing rights "designed for the protection of the **entire** community of interests in the corporation — **creditors as well as stockholders.**" (Emphasis ours) AND on the companion *Superintendent of Insurance v. Bankers Life and Casualty Company* (1971), 404 U.S. 6, 30 L.Ed.2d 128, 92 S.Ct. 165, *169*, as well as the directives from the Fifth Circuit in *Hooper v. Mountain States Corp.*, (5th Cir. 1960), 282 F.2d 195, *206-207* and *Bailes v. Colonial Press* (5th Cir. 1971), 444 F.2d 1241, that a **trustee-in-bankruptcy** of a corporation was the property party to institute suits in behalf of the estate, even if those suits involved alleged violations of

the Securities Acts! Since *Hooper*, supra, was itself one of the foundation cases for **Superintendent**, supra,[40] all Attorneys truly believed that institution of the plenary suits in behalf of the entire community of interests, was proper under the directives of **both** the United States Supreme Court and Court of Appeals for the Fifth Circuit! **Indeed the writer would suggest that THIS WAS ALSO THE VIEW OF THE BANKRUPTCY COURT, for, "why" would a Bankruptcy Court authorize the suits if they were not?**

However, the Fifth Circuit not only unduly restricts the awards of fees by the 8th factor in *Johnson*, supra, but it applies **in**applicable criteria, such as that in *York*, supra, 527 F.2d 1061.

York, by its own admission,[41] deals with "claims for compensation for services **in bankruptcy proceedings**" (Emphasis ours) and hence is largely **in**applicable to cases where **plenary litigation** must be invoked outside the confines of, and jurisdiction of, the bankruptcy court.

Where a trustee and/or his attorney deal in **existing** properties, that is, **existing** bankruptcy assets which would be available for the creditors and bankrupt, were it not necessary to have any Proceeding under the Act—then the rule announced in *York*, and in innumerable other cases within the same category, is the proper criterion for determining fees! However, a moment's reflection will show the utter inapplicability of such standard to the case at bar! Where a trustee must employ outside specialists to invoke PLENARY Litigation (that is, controversies at law and in equity, as

40. 92 S.Ct. at Page 168.
41. 527 F.2d 1061, 1068.

distinguished from proceedings under the Act within the meaning of Sec. 23a thereof—11 USCA 46a), and where **recoveries** are due **entirely** to the efforts of such Attorneys, it would create a DOUBLE-STANDARD to say that such services are not worth the usual and accepted amounts! It is one thing for the legal services to be **limited** by the amounts recovered, but it is an entirely different thing to say that the recoveries could NOT be used for payment of the Attorneys' Fees incurred. **How** could a bankrupt estate **ever** procure competent counsel for PLENARY Litigation, IF the rule announced by the Fifth Circuit were invoked—**especially** in a case where the Attorneys' efforts were delimited by an Order to ABANDON?

Perhaps the clearest response to the Fifth Circuit is to affirm that:

> NOT A DIME OF FUNDS FOR ATTORNEYS' FEES RE THE PLENARY LITIGATIONS IS BEING SOUGHT AGAINST **ANY** PRE-EXISTING BANKRUPTCY ASSET!

Instead, the Attorneys' Fees are being sought SOLELY AND ONLY OUT OF THE $680,000.00 THAT THE DISTRICT COURT "PERMITTED" THESE ATTORNEYS TO RECOVER! Indeed, **part** of this $680,000.00 has already been utilized in the discharge of Claims of the Ordinary Creditors! But that is an entirely different thing from these Attorneys' Fees encroaching on the **conventional** bankruptcy assets, that is, the **ordinary** bankruptcy assets liquidated by the trustee!

There is a cluster of cases, primarily involving the Securities Acts, wherein the Courts have allowed substantially **in excess of $100.00 per hour** to the Attorneys involved:

Newman v. Stein (SD NY 1973, 58 F.R.D. 540 — **$193.00** per hour.

Gerstle v. Gamble-Skogmo, Inc. (ED NY 1973), 366 F. Supp. 638 — **$220.69** per hour.

State of Illinois v. Harper & Row Publishers, Inc. (ND Ill. 1972), 55 F.R.D. 221 — **$119.50** per hour.

Arenson v. Board of Trade of Chicago (ND Ill. 1974), 372 F. Supp. 1349 — $140.00 - $500.00 (Average **$358.00**)

Newmark v. RKO General, Inc. (SD NY 1971), 332 F. Supp. 161 — **$187.50** per hour.

Donson Stores, Inv. v. American Bakeries Co. (SD NY 1973), 60 F.R.D. 417 — **$200.00** per hour.

Oppenlander v. Standard Oil Co. (D.C. Colo. 1974), 64 F.R.D. 597 — **$190.00** per hour.

HOWEVER, as is pointed out in *Collier on Bankruptcy*:[42]

> "The allowance of fees to an officer's attorney or accountant depends largely upon the facts of the individual case. In view of the fact that the elements determining an allowance are multifarious and vary with each case, decisions as to the amount of allowance as such have little, if any, value as precedents."

THIS IS CERTAINLY TRUE HERE, for, the Court could read what comes before, and what follows the above quotation — in fact this Court could read the **entire** 16 Volumes of *Collier* and still not find a similar situation substantially identical to that faced by the Attorneys representing First Colonial

42. 14th Ed V. 3A, Par. 62.12, Page 1483.

Corp. of America. **Where** would one discover such interference with Bankruptcy Administration? **Where** would one discover a "take-over" of plenary suits by American Benefit interests? **Where** would one discover a District Court **ordering** the abandonment of plenary litigation over the emphatic protest of trustee and ALL his Attorneys?

NONE of the Attorneys herein have sought the high awards **in excess of $100.00 per hour** previously awarded in other cases, supra. Indeed there is NO request to allow similar awards here! Rather, the writer suggests that the **best criteria** for determining Compensation is that stated in *Collier*:[43]

> "Economy is the most important principle, as has been repeatedly stressed by the United States Supreme Court. However, "economical" is by no means synonymous with "parsimonious" and should not exclude a compensation THAT IS UNDER ALL THE CIRCUMSTANCES OF THE CASE fair and reasonable. To reserve as much as possible for distribution to the creditors is one postulate, but there is another, perfectly compatible with the former, **not to discourage needlessly able and competent lawyers from accepting a retainer in bankruptcy by denying them reasonable remuneration. A misunderstood economy in this respect may lead to evils far greater than the sacrifice imposed on the individual creditor by reason of an equitable allowance for meritorious and diligent counsel.**" (Emphasis ours) (footnotes omitted)

This, is the criterion which **should** have been applied by the Fifth Circuit Court of Appeals!

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43. 14th Ed. V. 3A, Par. 62.12(5), Pages 1483-85.

CONCLUSION

Insofar as this Court may have the impression that this petition for certiorari seeks to abort further hearing on Attorneys' Fees, this conclusion should dispel it. **Not a single word appears in this entire petition to suggest that further hearing should be avoided! Rather, the prime issue is over "standing" of American Benefit!**

In a case where Ordinary Creditors sold a Half Million Dollars of Claims to an entity then in the American Benefit Complex, at a substantial discount, the question might be asked "WHY" would such entity pay **$401,005.00** (Tr. 132) for Claims against a bankrupt corporation? When large plenary suits in behalf of First Colonial were "taken over" then disposed of in a manner which, in net end result, discharged liabilities sought **against** American Benefit, the questions might be asked "HOW" was this of benefit to First Colonial's **other** shareholders and "WHY" the Securities and Exchange Commission failed or refuse to act? If Mr. Justice REHNQUIST referred to certain actions as "**IN TERROREM**" tactics in *Blue Chip Stamps v. Manor Drug Stores, Inc.* (1975), 95 S.Ct. 1917, *1929*, the writer wonders how this Justice would describe the actions mentioned herein! Perhaps some future Legal Archeologist will discover what happened to First Colonial and "WEEP"! However, he will find that the bankrupt estate and its Attorneys tried to uphold the mandate of Justice CARDOZO's famous words:

> "Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty

alone, but the punctillo of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate."[44]

The writer respectfully submits that American Benefit has NEITHER the "requisite financial interest" referred to in *Doremus*, supra, NOR the "zone of interests to be protected" within the meaning of *Camp*, supra, NOR the "personal stake in the outcome" referred to in *Sierra Club*, *Littleton*, *Richardson*, and *Warth*, supra, NOR the "direct injury" specified in *Linda*, supra, NOR the "concrete injury" referred to in *Schlesinger*, supra! At most, American Benefit has ONLY a mere "interest in a problem" within the view of *Sierra Club*, supra, OR "an ingenious academic exercise in the conceivable" within the rule of (*SCRAP*), supra, OR an "abstract" interest within the intendment of *Schlesinger* and *Warth*, supra!

SPECIAL REQUEST

As previously explained, when the trustee was ordered to ABANDON all plenary suits, there was not any effective appellant remedy available. Further, in spite of *Pepper v. Litton*, *Superintendent*, *Hooper*, and *Bailes*, supra, the District Court cast a cloud of doubt on trustee's right to represent interest of "stockholders." Now, that doubt has been dispelled by the Fifth Circuit referring in its Opinion (703) to bankrupt's **shareholders** among the interests that the writer is "**charged with protecting in his role as trustee.**" (Emphasis ours)

According to the books and records of bankrupt, the original owner of the stock **now** held by American Benefit

44. Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545, 62 A.L.R.1—quoted from 299 So.2d 481, 487.

paid only $53,000.00 into the corporation, with funds apparently borrowed "interest free" from the company while American Benefit paid **not a dime** therefor! THE **MINORITY** SHAREHOLDERS, HOWEVER, PAID IN THE SUBSTANTIALLY LARGER AMOUNT OF ABOUT $900,000.00!

Thus, because the plenary suits were ordered ABANDONED, there are no funds out of which these **minority** shareholders could be satisfied. (The estate has only $173,000.00 at present.) THERE IS, HOWEVER, A WAY IN WHICH THIS INJUSTICE CAN **NOW** BE RECTIFIED!

In filing their Petition to Intervene in the Bankruptcy Proceeding of First Colonial, American Benefit has, on the highest authority, **submitted itself to the Jurisdiction of the Bankruptcy Court!** *Katchen v. Landy* (1966), 382 U.S. 323, 86 S.Ct. 467, Collier on Bankruptcy, 14th Ed. V. 2, Par. 23.08, pages 532-560. Thus, the trustee now has benefit of RULES 713, 719, and 720, of the Rules of Bankruptcy Procedure to assert a **Counterclaim** against American Benefit and its individual counterpart **for the amounts claimed in Civil Actions 72-97 and 72-236**! !!

American Benefit failed to appeal the adverse determinations made in the plenary suits that American Benefit and/or its individual counterpart were the real parties at interest through the substituted Plaintiff! Obviously, it is now bound by these decrees!

There is a powerful precedent in allowing trustee to Counterclaim **for the amounts claimed in Civil Actions 72-97 and 72-236**, and that precedent can be found in the case of *Young v. Higbee*, 324 U.S. 204, 65 S.Ct. 594 (1945), which itself

arose under the Bankruptcy Act. In this case parties **dismissed** proceedings for a consideration to themselves, where the basis of the proceedings, if successful, would have benefitted an entire class. The words employed by the late Mr. Justice BLACK are so forceful, that they are quoted herein (65 S.Ct. at pages **598, 599**):

> "The situation which enabled them to traffic in the interests of others was created by a statute passed to protect the interests of all of them. The statute neither compels them to appeal nor to prosecute an appeal already taken contrary to their own interests; **it does impose upon them the duty of good faith to all other stockholders whose interests they temporarily control. . . . This control of the common rights of all . . . imposed on (them) a duty fairly to represent those common rights.**
>
> "THEY CANNOT AVAIL THEMSELVES OF THE STATUTORY PRIVILEGE OF LITIGATING FOR THE INTERESTS OF A CLASS AND THEN SHAKE OFF THEIR SELF-ASSUMED RESPONSIBILITIES TO OTHERS. . . . To hold that the Chandler Act permits this, would be to say that Congress . . . had substantially modified the whole body of law imposing the most rigorous responsibilities for fair dealing upon those who represent the rights of others." (Emphasis and parenthesis ours) (footnotes omitted)

Parallel with the instant case is striking! In *Higbee*, supra, there was no certainty that the Appeal Proceedings would have been successful! IN SPITE OF THIS, THE PARTIES WERE HELD LIABLE FOR ABORTING THEM. Thus, by the same reasoning, the American Benefit interest had not the right to enter Stipulations which caused the Dismissals of Civil Actions 72-97 and 72-236! In *Bell v. Hood*, 327 U.S. 678, 66 S.Ct. 773, 777, this Court spoke of federal courts using

"any available remedy to make good the wrong done." (Emphasis ours) Trustees asks that this concept be held applicable here, and that the right to Counterclaim for the amounts claimed by trustee in Civil Actions 72-97 and 72-236 be recognized!

PRAYER

WHEREFORE APPELANT/TRUSTEE-IN-BANKRUPTCY OF FIRST COLONIAL CORP. OF AMERICA PRAYS:

(1) That this Court issue a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, to review the Opinion and Judgment complained of.

(2) That after all due proceedings had, that the Judgment of the United States Court of Appeals for the Fifth Circuit, insofar as it decrees "standing" in American Benefit as a stockholder in First Colonial, be REVERSED.

(3) That this Court recognize right of trustee to Counterclaim against American Benefit and its individual counterpart, under RULES 713, 719, and 720 of the Rules of Bankruptcy Procedure, within the jurisdiction of the Bankruptcy Court, for the amounts claimed by trustee in Civil Actions 72-97 and 72-236 of the United States District Court for the Middle District of Louisiana.

(4) That this Court decree determination of the awards for attorneys' fees be made free of the restrictions of *Johnson* and its eighth factor, supra.

(5) And for any and all other relief herein deemed necessary by this Court.

Respectfully submitted,
BY TRUSTEE

FRANZ JOSEPH BADDOCK
P. O. Box 3573
Baton Rouge, LA 70821
(Tel.: 343-9194)

CERTIFICATE OF SERVICE

I certify that I have this date, by prepaid mail, forwarded a copy of the foregoing Petition for Certiorari to Attorneys Floyd J. Falcon, Jr., and Joe T. Pilcher, Jr., being Attorneys for AMERICAN BENEFIT LIFE INSURANCE COMPANY, c/o P. O. Box 3778, Baton Rouge, Louisiana 70821, and on the same date I have hand delivered a copy thereof to Mr. W. P. Wray, Jr., Attorney for BERT K. ROBINSON, c/o the latter's office on the 6th Floor of Fidelity National Bank Building, Riverside Mall, Baton Rouge, Louisiana 70801.

BATON ROUGE, Louisiana, this March 4th, 1977.

FRANZ JOSEPH BADDOCK
Petitioner

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EXHIBIT A

In the Matter of FIRST COLONIAL CORP. OF AMERICA, Bankrupt.

AMERICAN BENEFIT LIFE INSURANCE COMPANY et al., Appellants-Cross-Appellees,

v.

Franz J. BADDOCK, Trustee, Appellee-Cross-Appellant.

In the Matter of FIRST COLONIAL CORP. OF AMERICA, Bankrupt. Bert K. ROBINSON, Appellant,

v.

AMERICAN BENEFIT LIFE INSURANCE COMPANY et al., Appellees.

Nos. 75-2260, 75-2644.

United States Court of Appeals, Fifth Circuit.

Jan. 10, 1977.

Priority fees were awarded by a bankruptcy judge, and the United States District Court for the Middle District of Louisiana at Baton Rouge, E. Gordon West, J., dismissed appeals for lack of standing, and, in the alternative, affirmed the orders. The bankrupt and the owner of most of its outstanding stock appealed, and a trustee who also served as an attorney for the trustee cross-appealed. The Court of Appeals, Clark, Circuit Judge, held that under circumstances of the case the general rule that the trustee is the proper party to proceed on behalf of the whole community of inter-

ests of the bankrupt was inapplicable, and the shareholder had standing to appeal. There was such standing also because the bankruptcy judge had granted motion of such shareholder to intervene without qualifying its right to participate. Where, of four attorneys for the trustee, only one explained how he spent each hour in rendition of service, information was insufficient to support any award except to such attorney. The bankruptcy judge had a duty to hold an evidentiary hearing on his own motion, and was also obliged to hold such a hearing because the intervening shareholder requested it. The bankruptcy judge abused his discretion in determining the size of the fees, and the District Court abused its discretion in affirming the determination.

Reversed in part, vacated in part, and remanded.

Appeals from the United States District Court for the Middle District of Louisiana.

Before COLEMAN, CLARK and TJOFLAT, Circuit Judges.

CLARK, Circuit Judge:

These appeals challenge awards of priority fees made by the bankruptcy judge[1] to the attorneys for the trustee and a petitioning creditor from the bankruptcy estate. In No. 75-2644, Robinson, an attorney for the trustee, complains that the bankruptcy judge should have been more generous. In No. 75-2260, American Benefit Life Insurance Company [American Benefit], which owns fifty-five precent of the outstanding stock of the bankrupt, First Colonial Corporation

1. In this context the term "bankruptcy judge" means the referee of the court of bankruptcy. R. Bankruptcy Pro. 901(7).

of America [First Colonial], attacks the fees awarded to all of the attorneys on the grounds that they are excessive.[2] Both appellants also argue that the bankruptcy judge failed to apply the requisite standards and follow proper procedures in determining the amounts of the fee awards. Baddock, the trustee in bankruptcy, who also served as an attorney for the trustee, cross-appeals in No. 75-2260, contending that he deserves a larger fee. When these objections were raised before the district court, he dismissed the appeals for lack of standing and, in the alternative, affirmed the orders of the bankruptcy judge. We reverse.

First Colonial was adjudged bankrupt September 8, 1970, on the basis of an involuntary petition filed by Baddock and Pierson earlier that year.[3] The examination was lengthy and complex. Because it appeared that First Colonial possessed viable causes of action against several corporations and private individuals, Baddock, in his capacity as trustee in bankruptcy, petitioned the bankruptcy judge for the appointment of an attorney to prosecute the plenary suits. When he encountered difficulty in obtaining the services of a single attorney willing to handle all of the claims, Baddock sought the appointment of several attorneys for specific purposes. The bankruptcy judge subsequently approved the applications of four attorneys recommended by Baddock—Robinson, Howell, La Rose, and Baddock himself—to serve as attorneys for the trustee.

After approximately two years of discovery and pre-trial maneuvering, the plenary suits were consolidated for trial. On June 28 and July 1, 1974, shortly after the trial had begun, the district court directed the trustee to settle all of the bankrupt's claims for $600,000. Although the trustee and his attor-

2. On July 14, 1975, a panel of this court dismissed the appeals of Fournet, the receiver for First Colonial, de la Barre, on behalf of First Colonial, and Brookout, the receiver for Alabama Life Insurance Company, for lack of standing and failure to file an appeal bond.

3. First Colonial was abandoned by its officers and board of directors in 1969.

neys strenuously objected because they believed that a much larger recovery would result if the cases proceeded through trial, the district court concluded that further prosecution of the suits would not benefit the creditors and that failure to accept the settlement promptly would delay, and possibly place in jeopardy, receipt by the estate of an asset sufficient to satisfy all of the claims timely filed by creditors.

On July 7, 1974, American Benefit moved for permission to intervene in the bankruptcy proceeding. No one expressed opposition at that time, and the bankruptcy judge immediately granted the request without affixing any limitations on its right to participate. During the early fall of 1974, the four attorneys for the trustee and the two attorneys for the petitioning creditor petitioned for awards of priority fees as compensation for work performed in connection with the plenary suits.[4] On November 18, American Benefit filed written opposition to the petitions and asked that the bankruptcy judge hold a hearing on the issue of the amount of compensation to be allowed each attorney. Without responding to this request, the bankruptcy judge granted the five petitions for compensation on December 13.[5] With the exception of the

4. Section 62 of the Bankruptcy Act, 11 U.S.C.A. § 102 (1953), authorizes the award of compensation from the bankrupt estate to officers (including attorneys for the trustee and petitioning creditors) who assist in the administration of the estate. Section 64, 11 U.S.C.A. § 104 (1953), gives costs and expenses incurred in connection with the administration of the estate priority over other debts of the bankrupt.

5. The awards were as follows:

ATTORNEYS FOR THE TRUSTEE	HOURS CLAIMED	AMOUNT REQUESTED	AMOUNT AWARDED	HOURLY RATE
Baddock	3922.0	$159,680	$125,000	$31.31
Howell	1211.5	121,150	100,000	82.54
LaRose	300.0	10,500	10,500	35.00
Robinson	1704.2	226,605	125,000	73.35
ATTORNEYS FOR THE PETITIONING CREDITOR				
Baddock and Pierson	[none]	25,000	5,000	

* Their hourly rate cannot be computed because they did not state the number of hours they worked in this capacity.

name of the petitioning attorney, the date of his appointment, and the amount awarded, the five orders are identical.[6] They contain no explanation of the basis for the awards. American Benefit moved for a stay of the orders pending appeal. On December 31, the bankruptcy judge denied the motion on the ground that American Benefit lacked standing to appeal. Robinson and American Benefit then attacked the awards in the district court. After a brief hearing, the district court ruled on April 23, 1975, that (1) since none of the parties were creditors they had no standing to appeal from the fee awards, and (2) alternatively, if they had standing, that the bankruptcy judge had not erred in determining the size of the awards. Robinson and American Benefit challenge these two rulings in their appeals.

STANDING

[1] Section 39(c) of the Bankruptcy Act, 11 U.S.C.A. § 67(c) (1968), provides that a "person aggrieved" by an order of a bankruptcy judge may appeal from the order to a district court. Section 25(a) of the Act, 11 U.S.C.A. § 48(a) (1953),

6. The order awarding compensation to Robinson reads as follows:

ORDER FOR PAYMENT OF COMPENSATION TO ATTORNEY FOR TRUSTEE

Upon the annexed application of Bert K. Robinson, and if appearing therefrom that he has duly performed extensive and most valuable professional services as an attorney for the trustee pursuant to an order of this Court, made and entered on April 18, 1972, and, after due consideration, good cause appearing therefor, and notice (which would otherwise be required by § 58a(8) of the Bankruptcy Act and Rule 203(a)(6) of the Rules of Bankruptcy Procedure) and hearing being deemed unnecessary because all creditors herein have been paid and fully satisfied.

IT IS ORDERED that the compensation for the services rendered by such attorney be and it hereby is fixed at the sum of One Hundred Twenty-Five Thousand and No/100 Dollars ($125,000.00).

IT IS FURTHER ORDERED that the trustee herein pay said attorney the sum so fixed, in full payment of his services as such attorney.

states that an "aggrieved party" may appeal to a court of appeals from a district court order entered in connection with a bankruptcy proceeding. The rule in this circuit is that only those who have a "direct and substantial interest in the question appealed from" are "aggrieved" within the meaning of Section 25(a). *In re American Bonded Mortgage Co.*, 453 F.2d 528, 530 (5th Cir. 1971); *Edell v. Di Piazza*, 345 F.2d 336 (5th Cir.), *cert. denied*, 382 U.S. 931, 86 S.Ct. 322, 15 L.Ed.2d 342 (1965). Since the term "person aggrieved" in Section 39(c) is less restrictive than the term "aggrieved party" in Section 25(a), if Robinson and American Benefit can establish their right to appeal under Section 25(a), it would follow both that the district court erred in holding that they had no standing to appeal from the orders of the bankruptcy judge and that they possess standing to challenge the district court's order in that court of appeals.

[2] Since Robinson's fee was set by the bankruptcy judge, he obviously had a direct financial interest in the size of the award. Under *Edell v. Di Piazza, supra*, this interest is sufficient to permit him to appeal from the order fixing the amount of his fee. We have entertained similar appeals by attorneys for a trustee in bankruptcy in the past. *See In re Bemporad Carpet Mills, Inc.*, 434 F.2d 988 (5th Cir. 1970).

[3] Unless American Benefit possesses standing to challenge the other fee awards, only the reasonableness of the fee awarded to Robinson would be properly before us. The attorneys for the trustee, and the trustee himself, contend that American Benefit is not an "aggrieved party" within the meaning of Section 25(a). They argue that to permit American Benefit to appeal would be to allow any shareholder to challenge dispositions of assets affecting only the bankruptcy fund, and that such a rule would seriously interfere with the trustee's administration of the estate. Although the attorneys and the trustee are correct in stating that in the usual case the bankrupt and its shareholders do not have an interest in the disposition of the assets of the estate because Section

70 of the Bankruptcy Act, 11 U.S.C.A. § 110 (1963 & Supp. 1976), vests title to those assets in the trustee, *see e. g., Edell v. Di Piazza, supra*, this is hardly the usual case. In *Massachusetts Mutual Life Insurance Co. v. Brock*, 405 F.2d 429 (5th Cir. 1968), *cert. denied*, 395 U.S. 906, 89 St.Ct. 1748, 23 L.Ed.2d 220 (1969), we recognized that the interests of the bankrupt and the interest of those administering the estate diverge when the amount of the latter's compensation is at issue. In such circumstances it is the duty of the district court to "exercise its discretion for the double purpose of fairly treating the trustee and his counsel while at the same time doing equity to the debtor and creditors." *Id.* at 433. This duty cannot be adequately discharged unless representatives of the various interests are permitted to bring them to the attention of the court.

[4] The possibility that we might create a dangerous precedent by allowing American Benefit's appeal is overdrawn. Here we have: (1) an involuntary bankruptcy proceeding in which (2) all claims timely advanced by creditors have been satisfied, and in which (3) the bankrupt is not insolvent. Thus the size of the awards of attorneys' fees directly affects the amount of residual assets available for return to the bankrupt and its shareholders upon the termination of the proceeding. In addition to these three factors, (4) the bankrupt has been abandoned by its officers and board of directors, and (5) the trustee has a personal financial stake in the disposition of a substantial portion of the controversy which is adverse to that of the bankrupt. In these circumstances, we refuse to allow the trustee to rely upon the general rule that he is the proper party to proceed on behalf of the whole community of interests of the bankrupt. *See In re York International Building, Inc.*, 527 F.2d 1061, 1077 (9th Cir. 1973).

Rule 215(e) of the Rules of Bankruptcy Procedure provides that the court may authorize the trustee to act as his

own attorney where such authorization is in the best interests of the estate. There is, therefore, no inherent impropriety in such an arrangement. But the rule does not resolve the problems that may arise when a trustee-attorney's personal interest in the amount of compensation he receives in exchange for his services as attorney leads him to take a position adverse to that of the bankrupt and its shareholders whose interests he is charged with protecting in his role as trustee. Where the trustee serves as his own attorney there is no disinterested trustee to ensure that the attorney is paid only for professional services necessary to the administration of the estate. In this situation it is unseemly, to say the least, for a trustee-attorney to urge on appeal, first, that the compensation he was awarded for furnishing legal services to the bankrupt estate should be increased, and second, that the bankrupt and its shareholders have no standing to object to the amount of that compensation because the Bankruptcy Act makes safeguarding their interests his responsibility.

[5, 6] In addition to refusing to permit Baddock to use his position as trustee to prevent American Benefit from contesting the size of his attorneys' fee, we also hold that American Benefit has standing to appeal from all of the fee awards because the bankruptcy judge granted its motion to intervene without qualifying its right to participate in the proceeding. Rule 724 of the Rules of Bankruptcy Procedure reaffirms the principle that Rule 24 of the Federal Rules of Civil Procedure governs intervention in bankruptcy proceedings. *See generally Securities and Exchange Commission v. United States Realty & Improvement Co.*, 310 U.S. 434, 459, 60 S.Ct. 1044, 1055, 84 L.Ed. 1293, 1305 (1940). To the extent that the Rules of Bankruptcy Procedure are inconsistent with provisions of the Bankruptcy Act, those portions of the statute are superseded. 28 U.S.C.A. § 2075 (Supp.1976). Since an intervenor is bound by future orders, 3B J. Moore & Lucas, Moore's Federal Practice ¶ 24.16[6], at 24-671 (2d ed. 1975), it may appeal from an appealable order unless the intervention has been specially limited to forbid it. *Securities and Exchange Commission v. United States Realty & Improvement Co.*, 310 U.S. at 460, 60 S.Ct. at 1055, 84 L.Ed. at 1306; *Texas v. Anderson, Clayton & Co.*, 92 F.2d 104, 106 (5th Cir.), *cert. denied*, 302 U.S. 747, 58 S.Ct. 265, 82 L.Ed. 578 (1937); 7A C. Wright & A. Miller, Federal Practice & Procedure, § 1920, at 611 (1972). It follows that American Benefit had standing to challenge in the district court all of the orders of the bankruptcy judge awarding fees to the attorneys for the trustee, and that it has standing to appeal in this court from the district court's order approving the awards. *Klein v. Nu-Way Shoe Co.*, 136 F.2d 986 (2d Cir. 1943). Thus all five of the fee awards have been properly brought before us for review.

ATTORNEYS' FEES

[7] Because the lower court "has a far better means of knowing what is just and reasonable than an appellate court can have," *Trustees v. Greenough*, 105 U.S. 527, 537, 26 L.Ed. 1157, 1162 (1881), district courts and bankruptcy judges have broad discretion in determining the amount of attorneys' fees to award as compensation for services performed in connection with bankruptcy proceedings, and their exercise of that discretion will not be disturbed by an appellate court absent a showing that it was abused. *In re Bemporad Carpet Mills, Inc.*, 434 F.2d at 989; *Massachusetts Mutual Life Insurance Co. v. Brock*, 405 F.2d at 432; *Calhoun v. Hertwig*, 363 F.2d 257, 261 (5th Cir. 1966), *cert. denied*, 386 U.S. 966, 87 S.Ct. 1047, 18 L.Ed.2d 116 (1967); *See* 3A J. Moore & L. King, Collier on Bankruptcy ¶ 62.12[4] (14th ed. 1975). The fact that much of the work for which the attorneys for the trustee desire compensation was performed before a special master appointed by the district court to hear the plenary suits, and not before either the bankruptcy judge or the district court, does not change the scope of review. But in awarding attorneys' fees under these conditions the bankruptcy judge and the district courts "should be particularly diligent in setting

forth the facts that support [their] conclusion." *Lindy Brothers Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 166 n. 9 (3d Cir. 1973).

[8] We are especially reluctant to interfere in this case since the bankruptcy judge and the district court are in agreement. *Blanch v. Rankin*, 291 F.2d 217, 219 (5th Cir. 1961); *Campbell v. Green*, 112 F.2d 143, 144 (5th Cir. 1940). But bankruptcy judges and district courts may abuse their discretion either by failing to apply proper legal standards and follow proper procedures in making the determination, *Massachusetts Mutual Life Insurance Co. v. Brock*, 405 F.2d at 432; *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 720 (5th Cir. 1974); *Lindy Brothers Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d at 166, or by basing the award upon findings of fact that are clearly erroneous. *Monson v. First National Bank of Bradenton*, 497 F.2d 135, 137 (5th Cir. 1974); *see Massachusetts Mutual Life Insurance Co. v. Brock*, 405 F.2d at 432. Since we hold that the bankruptcy judge and the district court failed to employ the requisite standards and procedures in awarding attorneys fees, we do not examine the soundness of their findings of fact. Nor do we reach the question of whether the amounts awarded were reasonable.

[9] In order to establish an objective basis for determining the amount of compensation that is reasonable for an attorney's services, and to make meaningful review of that determination possible on appeal, we held in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d at 717-19, that a district court must consider the following twelve factors in awarding attorneys' fees:

> (1) The time and labor required; (2) The novelty and difficulty of the questions; (3) The skill requisite to perform the legal service properly; (4) The preclusion of other employment by the attorney due to acceptance of the case; (5) The customary fee; (6) Whether the fee is fixed or contingent; (7) Time limitations imposed by the client or other circumstances; (8) The amount involved and the results obtained; (9) The experience, reputation, and ability of the attorneys; (10) The "undesirability" of the case; (11) The nature and length of the professional relationship with the client; (12) Awards in similar cases.

Although *Johnson* involved a suit brought under 42 U.S.C.A. § 2000e *et seq.*, the guidelines we established there are equally useful whenever the award of reasonable attorney's fee is authorized by statute.[7] *See Miller v. Mackey International, Inc.*, 515 F.2d 241, 242 (5th Cir. 1975) (federal securities); *Ward v. Kelly*, 515 F.2d 908, 912 (5th Cir. 1975) (school desegregation); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied*, 425 U.S. 951, 96 S.Ct. 1726, 48 L.Ed.2d 195 (1976) (labor); *see also Jacobowitz v. Double Seven Corp.*, 378 F.2d 405, 408 (9th Cir. 1967) (bankruptcy). *But see In re Delta Food Processing Corp.*, 374 F.Supp. 76, 81 (N.D. Miss. 1974) (bankruptcy).

Proper application of these guidelines in the bankruptcy context requires that at least two additional considerations be kept in mind.

[10, 11] First, the strong policy of the Bankruptcy Act that estates be administered as efficiently as possible demands recognition. *See In re Bemporad Carpet Mills, Inc.*, 434 F.2d at 990; *Texas Bank & Trust Co. v. Crippen*, 235 F.2d 472, 476 (5th Cir. 1956). Indeed it has been suggested that "[e]conomy is the most important principle" to be considered in awarding fees to the attorneys for the trustee. 3A J. Moore &. L. King, Collier on Bankruptcy, ¶ 62.12[5], at 1483 (14th ed. 1975).

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7. Section 64(a)(1) of the Bankruptcy Act, 11 U.S.C.A. § 104 (Supp. 1976) and Rule 219(c)(1) of the Rules of Bankruptcy Procedure provide that the amount of compensation awarded for the provision of legal services to a bankrupt estate must be reasonable.

This does not mean that the bankruptcy judge should be parsimonious—that would be a false economy which would discourage competent counsel from offering their services to trustees in bankruptcy—but rather that he should award an amount which is "at the lower end of the spectrum of reasonableness." *Jacobowitz v. Double Seven Corp.*, 378 F.2d at 404. Since attorneys assisting the trustee in the administration of a bankruptcy estate are acting not as private persons but as officers of the court, *Official Creditors' Committee of Fox Markets, Inc. v. Ely*, 337 F.2d 461, 465 (9th Cir. 1964), they should not expect to be compensated as generously for their services as they might be were they privately employed. *In re York International Building, Inc.*, 527 F.2d at 1069; Herzog, *Fees and Allowances in Bankruptcy*, 36 Conn.B.J. 374, 376-77 (1962).

[12] Second, there are a number of peculiarities of bankruptcy practice—such as the award of ad interim allowances and the possibility that some officers of the court may be furnishing services to the estate in more than one capacity—which could lead to the award of duplicative fees or compensation for non-legal services if overlooked. The Bankruptcy Act forbids such a result. 11 U.S.C.A. §§ 102, 104 (1953 & Supp.1976); R. Bankruptcy Pro. 219.

[13, 14] Determining a reasonable attorneys' fee is a three-step process. In the first phase, the bankruptcy judge or district court must ascertain the nature and extent of the services supplied by the attorney. To this end, each attorney seeking compensation should be required to file a statement which recites the number of hours worked and contains a description of how each of those hours was spent. *In re Meade Land & Development Co.*, 527 F.2d 280, 283-84 (3d Cir. 1975). If there are disputed issues of fact, an evidentiary hearing must be held to facilitate their resolution. *Perkins v. Standard Oil Co.*, 399 U.S. 222, 223, 90 S.Ct. 1989, 1990, 26 L.Ed.2d 534, 538 (1970); *Lindy Brothers Builders, Inc. v. American*

Radiator & Standard Sanitary Corp., 487 F.2d at 169-70. Once the nature and extent of the services rendered have been determined, the bankruptcy judge must assess the value of those services. Because judges are familiar with the fees charged by the legal profession and experienced at gauging the quality of legal work, no expert opinion evidence is required on this issue, though such evidence may be accepted. *Montalvo v. Tower Life Building*, 426 F.2d 1135, 1150 (5th Cir. 1970); *Campbell v. Green*, 112 F.2d at 144. When both of these steps have been completed, and the amount of compensation that is reasonable has been determined, the bankruptcy judge must briefly explain the findings and reasons upon which the award is based, including an indication of how each of the twelve factors listed in *Johnson* affected his decision. *See In re Orbit Liquor Store*, 439 F.2d 1351, 1353-54 (5th Cir. 1971).

[15] The bankruptcy judge deviated from the prescribed standards and procedures in three significant respects. First, he neglected to require sufficient documentation of the amount of time spent and the type of work done in each hour for which compensation was requested. Of the four attorneys for the trustee, only Robinson explained how he spent each hour. Baddock merely stated that he had "expended a minimum of 3,992 hours," and La Rose noted only that he had worked "in excess of 300 hours." In their joint petition for compensation for work performed as attorneys for the petitioning creditor, Baddock and Pierson did not even estimate the total number of hours they spent. This information is insufficient to support the award of fees to all of the attorneys except Robinson. *In re Orbit Liquor Store*, 439 F.2d at 1353, *In re Meade Land & Development Co.*, 527 F.2d at 283-84; *Lindy Brothers Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 487 F.2d at 167. The deficiency is particularly serious where, as here, one person acts as both trustee and attorney for the trustee and fails to clearly distinguish in his petition for compensation between the tasks

he performed as attorney and those performed as trustee. *In re Orbit Liquor Store*, 439 F.2d at 1354.

[16] Second, although American Benefit specifically requested that an evidentiary hearing be held concerning the petitions for priority fees, the bankruptcy judge failed to do so. In addition to his duty to hold such a hearing on his own motion because the petitions for compensation did not adequately develop the factual basis for the awards, he was obliged to hold one when the intervenor requested it. *Cf. Ross v. Bernard*, 396 U.S. 531, 541 n. 15, 90 S.Ct. 733, 740 24 L.Ed.2d 729, 737 (1970); 3B J. Moore & J. Lucas, Moore's Federal Practice ¶ 24.16[7] (2d ed. 1975); 5 *id.* ¶ 38.38[3]. Third, the bankruptcy judge failed to justify the awards with findings and reasons and did not explain how the twelve factors enumerated in *Johnson* affected his decision. Indeed, we are left to wonder whether the *Johnson* factors were considered at all and whether there is a rational basis for awards that differ so markedly when viewed from the hourly rate perspective.[8]

[17] Because these deficiencies raise serious questions about the validity of the awards, and because they survived review in district court uncorrected, we hold that the bankruptcy judge abused his discretion in determining the size of the fees, and that the district court abused its discretion in affirming that determination.

[18, 19] Because the question is likely to recur, we now resolve the issue of how factor 8 of the *Johnson* guidelines should be applied on remand. The attorneys for the trustee contend that the plenary suits were improperly compromised for a fraction of their value, and that therefore the bankruptcy judge and the district court should have considered the amount of the recovery which might have been obtained had the cases gone to trial, rather than the money actually

8. See note 5, supra.

received from the settlement, as the "results obtained" for the purpose of awarding attorney's fees. This argument is without merit in today's case. After consulting with all of the interested parties, the bankruptcy judge found that the $600,000 settlement offer, which was payable immediately, was more valuable to the creditors of the estate than the potential yield of the plenary suits, once the latter had been discounted by the possibility of failure and the inevitable delay in receipt of the judgment even in the event of victory. Findings of fact by a bankruptcy judge will not be reversed unless they are clearly erroneous. R. Bankruptcy Pro. 810; *Cle-Ware Industries, Inc. v. Sokolsky*, 493 F.2d 863, 869 (6th Cir. 1974). The attorneys have not met this standard. In addition, services directed toward enhancing the value of the estate beyond the amount required to discharge the bankrupt's obligations to creditors and to cover the costs of administration benefit the bankrupt personally and are not compensable from the estate, *See In re Orbit Liquor Store*, 439 F.2d at 1354; *In re Eastwood*, 239 F.Supp. 847, 851 (D.Or. 1965). Accepting the position advanced by the attorneys for the trustee would place the court in the position of compelling an involuntary client to accept and pay for as a "benefit" something it has not requested that is uncertain in amount, and that has not actually been conferred upon it. Neither Congress in enacting Section 62 of the Bankruptcy Act, 11 U.S.C.A. § 102 (1953), nor this court in deciding *Johnson v. Georgia Highway Express, Inc., supra*, intended such a result.

As this case demonstrates, the determination of what constitutes reasonable compensation for services furnished by an attorney in a bankruptcy proceeding can be a distasteful task. *See Finn v. Childs Co.*, 181 F.2d 431, 435 (2d Cir. 1950). But this possibility does not excuse bankruptcy judges and district courts from conducting the thorough investigation that is necessary if they are to make their determinations properly. They must apply standards and follow procedures which are sufficient to enable them to ascertain what the

nature and extent of the services provided by an attorney were, and to accurately assess the value of those services. Where, as here, the standards and procedures employed are not capable of fulfilling these functions, the amount of compensation that is reasonable for the services rendered cannot be determined, and appellate review of the award becomes a meaningless gesture. Accordingly, we reverse the portion of the district court's order which holds that the appellants and the cross-appellant lack standing to appeal, vacate the order insofar as it approves the fee awards, and remand the remainder of this case to the district court with directions to return it to the bankruptcy judge. The district court shall instruct the bankruptcy judge to (1) require the attorneys to submit a statement of the number of hours worked and a description of how each hour was spent, (2) hold an evidentiary hearing in which both the attorneys and American Benefit may participate to resolve all issues of disputed material fact, and (3) redetermine the amount of fees to be awarded in light of the guidelines set forth in *Johnson v. Georgia Highway Express, Inc., supra*, as they are augmented by this opinion for application in the bankruptcy context.

REVERSED IN PART, VACATED IN PART, AND REMANDED.

EXHIBIT A-1

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

October Term, 1976

Nos. 75-2260 and 75-2644

D. C. Docket No. BK 70-334
In the Matter of FIRST COLONIAL CORP. OF AMERICA, Bankrupt.

AMERICAN BENEFIT LIFE INSURANCE COMPANY et al., Appellants-Cross-Appellees

v.

Franz J. BADDOCK, Trustee, Appellee-Cross-Appellant.

In the Matter of FIRST COLONIAL CORP. OF AMERICA, Bankrupt.

Bert K. ROBINSON, Appellant.

v.

AMERICAN BENEFIT LIFE INSURANCE COMPANY et al., Appellees.

Before COLEMAN, CLARK and TJOFLAT, Circuit Judges

JUDGMENT

These causes came on to be heard on the transcript of the record from the United States District Court for the Middle District of Alabama, and were argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in these causes be, and the same is hereby reversed in part and vacated in part, and that these causes be and the same are hereby remanded to the said District Court in accordance with the opinion of this Court;

It is further ordered that each party bear their own costs of printing briefs on appeal in this Court with all of the parties to share equally in the costs of printing the appendix.

January 10, 1977

Issued as Mandate:

EXHIBIT B

UNITED STATES COURT OF APPEALS
Fifth Circuit

Office of the Clerk

February 2, 1977

TO ALL PARTIES LISTED BELOW:

NO. 75-2260—In the Matter Of: First Colonial IV Corp. of American, Bankrupt.
American Benefit Life Ins. Co., ET AL.
v. Franz J. Baddock, Trustee

Dear Counsel:

The enclosed order has this day been entered on petition ( ) for rehearing on behalf of Franz J. Baddock.
See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Susan M. Gravais
Deputy Clerk

/smg

cc and enclosure to:

Mr. Floyd J. Falcon, Jr.
Mr. Joe T. Pilcher, Jr.
Mr. W. P. Wray, Jr.
Mr. R. Boatner Howell, Jr.
Mr. Franz J. Baddock

EXHIBIT C

UNITED STATES COURT OF APPEALS
Fifth Circuit

Office of the Clerk

February 2, 1977

TO ALL COUNSEL OF RECORD

NO. 75-2260—In the Matter of: First Colonial IV Corp. of America, Bankrupt. American Benefit Life Insurance Co., ET AL. v. Franz J. Baddock, Trustee

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition( ) for rehearing en banc* has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Susan M. Gravais
Deputy Clerk

/smg

cc: Mr. Floyd J. Falcon, Jr.
Mr. Joe T. Pilcher, Jr.
Mr. W. P. Wray, Jr.
Mr. R. Boatner Howell, Jr.
Mr. Franz J. Baddock

* on behalf of Franz J. Baddock, Trustee in Bankruptcy

EXHIBIT D

IN THE UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 75-2260

In the Matter of: FIRST COLONIAL IV CORP. OF AMERICA, Bankrupt.

AMERICAN BENEFIT LIFE INSURANCE COMPANY, ET AL.,
Appellants-Cross Appellees,

versus

FRANZ J. BADDOCK, Trustee,
Appellee-Cross Appellant.

Appeal from the United States District Court for the Middle District of Louisiana

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ON PETITION FOR REHEARING
(FEBRUARY 2, 1977)

Before COLEMAN, CLARK and TJOFLAT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed on behalf of Franz J. Baddock in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ CHARLES CLARK

United States Circuit Judge

EXHIBIT E

IN THE UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 75-2260

In the Matter of: FIRST COLONIAL CORP. OF AMERICA, Bankrupt.

AMERICAN BENEFIT LIFE INSURANCE COMPANY, ET AL.,
Appellants,

versus

FRANZ J. BADDOCK, Trustee,
Appellee.

Appeal from the United States District Court for the Middle District of Louisiana

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(July 14, 1975)

Before GEWIN, GOLDBERG and DYER, Circuit Judges

BY THE COURT:

Upon consideration of the motions of Franz J. Baddock, as Trustee of First Colonial Corp. of America,

IT IS ORDERED:

1. That the motion to dismiss the appeal of American Benefit Life Insurance Company for lack of standing is carried with the case.

2. That the motions to dismiss the appeals of John G. Bookout, as Receiver for Alabama National Life Insurance Company, John B. Fournet, as Receiver for First Colonial Corp. of America, and F. D. V. de la Barre, in behalf of First Colonial Corp. of America, are severally granted for lack of standing, and for failure to file a bond for costs or appeal.

3. That the motion to delimit the record on appeal to exclude matters allegedly irrelevant to the issues on appeal is denied with the caveat that the Court will strictly adhere to the provisions of Rule 30(b) F.R.A.P.

4. That the motion to expedite the appeal is denied.

5. That the motion for delay in complying with the provisions of Rule 10(b) and 11(a) F.R.A.P., is granted and the times specified in the rules shall be extended to 20 days from the date of this Order.

EXHIBIT F

UNITED STATES DISTRICT COURT
Middle District of Louisiana
Office of the Clerk

IN THE MATTER OF — BANKRUPTCY

FIRST COLONIAL CORP. OF AMERICA — NO. 70-334

NOTICE TO COUNSEL

Pursuant to Rule 77 (d) of the Federal Rules of Civil Procedure, you are hereby notified of the entry on the docket as of this day the Court's (Judge West) orders in the captioned matter rendered on April 18, 1975, dismissing the appeals of all parties pertaining to the attorneys' fees fixed by the Bankruptcy Judge and affirming the orders of the Bankruptcy Judge establishing said fees.

April 23, 1975

CHARLES H. BANTA, CLERK

By Mary Ann Hair
Chief Deputy

EXHIBIT G

UNITED STATES DISTRICT OF COURT
Middle District of Louisiana

MINUTE ENTRY:

APRIL 18, 1975

WEST, J.

IN THE MATTER OF BANKRUPTCY

FIRST COLONIAL CORP. OF AMERICA NO. 70-334

* * * * *

This cause came on for hearing this day upon the several motions of Bert K. Robinson, Esq., to dismiss all appeals taken by various parties concerning the attorney fees fixed by the Bankruptcy Judge to be paid to the said Bert K. Robinson. Present for the hearing were:

Bert K. Robinson, Esq.
Attorney for the Trustee

Floyd Falcon, Jr., Esq.
Attorney for American Benefit Life
Insurance Company

B. B. Taylor, Esq.
John Voortman, Esq.
Attorneys for Norris Grain Company

F. D. V. DelaBarre, Esq.
Seeking to appear for First Colonial Corp.
of America.

The motions to dismiss the appeals were based upon several grounds, i.e., lack of standing, failure to properly designate the record on appeal, and on the merits.

All counsel present were given the opportunity to be heard but no serious opposition to the established fees was voiced in court. All counsel apparently preferred to have the matter submitted on the briefs previously filed.

After due consideration of this record, and the briefs filed herein, it is the opinion of this Court, for the reasons stated in open court, that the parties contesting the attorney fees set by the Bankruptcy Judge do not have standing to pursue these appeals and that thus:

IT IS ORDERED that the appeals concerning the attorney fees established for Bert K. Robinson, Esq. be, and they are hereby DISMISSED.

In the alternative, and in the event it should be determined on appeal that there is standing to appeal, this Court has carefully considered the merits of these claims, and for the reasons orally read into the record at the hearing on these motions, the Court finds no error, manifest or otherwise, in the fixing of the fees of Bert K. Robinson, Esq. by the Bankruptcy Judge, and therefore:

IT IS FURTHER ORDERED that on the merits these appeals be, and they are hereby DISMISSED, and the previous orders of the Bankruptcy Judge fixing these fees be, and they are hereby AFFIRMED.

In addition to the above motions, many other similar motions have been filed by other parties to these proceedings. Appeals to this Court were taken by R. Boatner Howell, Jr., Franz Baddock, James F. Pierson, Jr., and Bert K. Robinson, all seeking an increase in the compensation awarded them by the Bankruptcy Judge. After due consideration of the merits of those appeals, the Court finds no error in the fixing of their fees by the Bankruptcy Judge, and therefore:

IT IS ORDERED that those appeals be, and they are hereby DISMISSED.

For the reasons stated orally in open Court, on the question of standing to appeal and/or on the merits, and without the need for further oral argument:

IT IS ORDERED that all appeals pending before this Court concerning the attorney fees for Bert K. Robinson, Esq., R. Boatner Howell, Jr., Esq., Franz Baddock, Esq., James F. Pierson, Jr., Esq., Erwin A. Larose, Esq., or any other attorney for whom a fee was fixed by the Bankruptcy Judge in these proceedings, and particularly, but not by way of limitation, all such appeals filed on behalf of First Colonial Corporation of America, John B. Fournet, American Benefit Life Insurance Company, John G. Bookout, and Alabama National Life Insurance Company, be, and they are hereby DISMISSED, and the judgment of the Bankruptcy Judge establishing said fees is hereby AFFIRMED.

This order, for appellate purposes, shall be considered a final judgment, and is intended to dispose of all motions pending in this matter pertaining to the establishment of attorney fees by the Bankruptcy Judge.

E. GORDON WEST

United States District Judge

EXHIBIT H

UNITED STATES DISTRICT COURT
Middle District of Louisiana

IN THE MATTER OF	IN BANKRUPTCY
FIRST COLONIAL CORPORATION OF AMERICA	BK 70-334

ORDER TO ABANDON PROPERTY
(Certain Causes of Action)

The Court having been apprised of the commencement of trial of the consolidated plenary proceedings in which the Trustee is a party litigant in the U. S. District Court for this Middle District of Louisiana; and the Court having also been informed of the desire of many of the parties litigant to compromise and settle some of the complex issues presented in said suits; and the Court having already (on June 18, 1974) authorized the Trustee to compromise and settle his claims against Robert E. Wilder, one of the major litigants in said suits, upon certain terms and conditions which would ultimately yield to this estate the sum of $600,000 (together with interest thereon at the rate of 7% per annum from June 12, 1974, until paid); and it appearing that any and all uncertainty and delay with respect to the Trustee's receipt of said sum can and would be removed were the Trustee to divest himself of title to those causes of action which he has asserted against others of the aforesaid parties litigant; and it appearing doubtful that even the most successful prosecution of his causes of action against those remaining litigants would yield any benefits for the general creditors of this estate; and the Court having counselled with the attorney for the assignee of all those general creditors whose claims have been filed and with the Trustee and his attorneys and with other parties in interest as to the advisability of this order; and it appearing that time is of the essence and that the exigencies of

the matter and other considerations (including the approval and recommendation of the aforesaid attorney for the assignee of all those general creditors whose claims are on file) justify and compel eschewal of any advance notice or hearing upon this order; and due deliberation having been had hereon:

IT IS ORDERED, ADJUDGED AND DECREED, pursuant to the provisions of Rule 608 of the Rules of Bankruptcy Procedure, that Franz Joseph Baddock, Trustee of the estate of First Colonial Corporation of America, in Bankruptcy—upon his receipt of the sum of $600,000 in cash (together with interest thereon at the rate of 7% per annum from July 3, 1974, until paid) from the Clerk of the U. S. District Court for the Middle District of Louisiana, and upon the other terms and conditions hereinafter specified—be and he is hereby authorized and directed to abandon and disclaim all of his right, title and interest in and to all claims and causes of action which were asserted or might have been asserted by him as such Trustee in Civil Actions Nos. 72-97, 72-222, 72-233, 72-236, 73-115 and (insofar as the Trustee may have any such rights therein) Civil Action 74-6 (formerly Civil Action No. 69-45 on the docket of the U. S. District Court for the Northern District of Alabama)—all pending in said U. S. District Court for said Middle District of Louisiana—together with such promissory notes, take-out letters (commitments), and other evidences of indebtedness upon which these particular causes of action may be founded, provided, however, that such disclaimer shall not extend to any other assets of this estate whatsoever, and further provided that such disclaimer shall not include (and there shall be specifically excepted therefrom and reserved to the Trustee) the Second Cause of Action which the Trustee asserted in Civil Action No. 72-222 against Gulf Union Corporation and DAWL Corporation (which matter is the subject of an order herein entered by this Court on June 24, 1974, approving a compromise and settlement with respect thereto, in consideration of the payment of the sum of $75,000, with interest thereon, to the Trustee).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee shall not assert or reassert in this bankruptcy proceeding any claim or cause of action which has been asserted or might have been asserted by him in any of the aforesaid civil actions, provided, however, that there shall be excepted from this prohibition (and there shall be specifically reserved to the Trustee) the Trustee's right to urge in this bankruptcy proceeding (1) any and all defenses he may have with respect to the purported mortgage or secured claim of National American Life Insurance Company upon the Jackson, Tennessee, Dormitory property or the proceeds of the sale thereof, to the extent that such defenses may have arisen out of transactions related thereto, including the so-called "Gulf Union—First Colonial—National American" transaction, and (2) any and all defenses and objections arising out of related matters which he might have with respect to the proof or allowance or amounts of the respective unsecured claims purportedly purchased by National American Life Insurance Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that National American Life Insurance Company shall release the Trustee from any and all claims and causes of action which said National American Life Insurance Company has asserted or might have asserted against the Trustee and/or this estate in Civil Actions Nos. 72-233 and 72-236, and such causes of action shall be dismissed with prejudice, provided, however, that there shall be specifically reserved to said National American Life Insurance Company any and all of its rights to assert in this bankruptcy proceeding (1) its purported mortgage or secured claim upon the Jackson, Tennessee, Dormitory property or the proceeds of the sale thereof, and (2) the respective unsecured claims purportedly purchased by it.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the Trustee's receipt of the aforesaid sum of $600,000 (with such amount of interest as may have accrued thereon at the date of payment thereof) and his effecting the aforesaid disclaimer (which he is to present and file in the respective proceedings simultaneously with such payment), then, but not before then:

1. All stay orders heretofore entered by this Court with respect to proceedings in the aforesaid Civil Action No. 74-6 (formerly Civil Action No. 69-45 on the docket of the U. S. District Court for the Northern District of Alabama), and

2. The order herein entered by this Court on June 18, 1974, authorizing and directing the Trustee to accept the offer in compromise and settlement which had been submitted to him on June 3, 1974, by Robert E. Wilder,

shall be deemed to have been hereby recalled and vacated—except insofar as said Wilder has obligated himself in connection with such offer to pay to the Trustee interest on the sum of $600,000 at the rate of 7% per annum from June 12, 1974, to the date of the Trustee's receipt of payment of such amount—and the complaint filed by the Trustee seeking an order directing American Benefit Life Insurance Company and John G. Bookout, Commissioner of Insurance for the State of Alabama and Receiver of Alabama National Life Insurance Company, to show cause (which order has not been acted upon by this Court) shall, upon a motion to be filed by said Trustee, be dismissed with prejudice (because the issues raised thereby will have become moot upon the Trustee's disclaimer of his cause of action in Civil Action No. 73-115).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all books and records of the bankrupt shall remain under the jurisdiction of the U. S. District Court for this Middle District of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon the substitution of a party or parties in the place and stead of the Trustee as a party litigant in any of the aforesaid actions, the Trustee and his attorneys shall be and they hereby are authorized and directed to surrender to such successor(s) in interest, upon their (such successor's(s')) receipting therefor, (1) any and all evidentiary materials which have been introduced by and on behalf of the Trustee in the trial of the disclaimed causes of action and (2) any and all additional evidentiary materials scheduled for such introduction and described in existing pretrial orders entered in said proceedings.

Baton Rouge, Louisiana, June 28, 1974.

HARVEY H. POSNER
Bankruptcy Judge

I certify that this is a true
copy of the original.

HARVEY H. POSNER
Bankruptcy Judge

EXHIBIT I

UNITED STATES DISTRICT COURT
Middle District of Louisiana

IN THE MATTER OF: IN BANKRUPTCY

FIRST COLONIAL CORP. OF AMERICA BK 70-334

AMENDED AND SUPPLEMENTAL ORDER
TO ABANDON PROPERTY
(Certain Causes of Action)

At Baton Rouge, Louisiana, within said District on this the 1st day of July, in the year 1974.

Pursuant to the provisions of Rule 608 of the Rules of Bankruptcy Procedure.

IT IS ORDERED THAT the "Order to Abandon Property" entered herein on June 28, 1974, be and it is hereby revised and amended to read as follows:

The Court having been apprised of the commencement of trial of the consolidated plenary proceedings in which the Trustee is a party litigant in the U. S. District Court for the Middle District of Louisiana and the Court having also been informed of the desire of many of the parties litigant to compromise and settle some of the complex issues presented in said suits; and the Court having already (on June 18, 1974) authorized the Trustee to compromise and settle his claims against Robert E. Wilder, one of the major litigants in said suits, upon certain terms and conditions which could ultimately yield to this estate the sum of $600,000.00 (together with interest thereon at the rate of 7% per annum from June 12, 1974, until paid); and it appearing that any and all uncertainty and delay with respect to the Trustee's receipt

of said sum can and would be removed were the Trustee to divest himself of title to those causes of action which he has asserted against others of the aforesaid parties litigant; and it appearing doubtful that even the most successful prosecution of his causes of action against those remaining litigants would yield any benefits for the general creditors of this estate; and the Court having counselled with the attorney for the assignee of all those general creditors whose claims have been filed and with the Trustee and his attorneys, and with other parties in interest as to the advisability of this Order; and it appearing that time is of the essence and that the exigencies of the matter and other considerations (including the approval and recommendation of the aforesaid attorney for the assignee of all those general creditors whose claims are on file) justify and compel eschewal of any advance notice or hearing upon this Order; and due deliberation having been had hereon:

IT IS ORDERED, ADJUDGED AND DECREED, pursuant to the provisions of Rule 608 of the Rules of Bankruptcy Procedure, that Franz Joseph Baddock, Trustee-in-Bankruptcy of the estate of First Colonial Corp. of America, in Bankruptcy, upon his receipt of the sum of $600,000.00 in cash (together with interest thereon at the rate of 7% per annum from July 3, 1974, until paid) from the Clerk of the U. S. District Court for the Middle District of Louisiana, and upon the other terms and conditions hereinafter specified, be and he is hereby authorized and directed to abandon and disclaim all of his right, title and interest in and to all claims, actions and causes of action which were asserted or might have been asserted by him as such Trustee in Civil Actions Nos. 72-97, 72-222; 72-233, 72-236, 72-115 and (insofar as the Trustee may have any such rights therein) Civil Action 74-6 (formerly Civil Action No. 69-45 of the docket of the U. S. District Court for the Northern District of Alabama)—all pending in said U. S. District Court for said Middle District of Louisiana—together with such promissory notes, take-out

letters (commitments), and other evidences of indebtedness, together with any and all collateral by which they may be secured (hereinafter specifically identified) or upon which these particular causes of action may be founded; provided, however, that such disclaimer shall not extend to any other assets of this estate whatsoever, and further provided that such disclaimer shall not include (and there shall be specifically excepted therefrom and reserved to the Trustee) the Second Cause of Action which the Trustee asserted in Civil Action No. 72-222 Against Gulf Union Corporation and DAWL Corporation (which matter is the subject of an Order herein entered by this Court on June 24, 1974, approving a compromise and settlement with respect thereto, in consideration of the payment of the sum of $75,000.00 with interest thereon, to Trustee.)

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the collateral which may seceure such promissory notes, take-out letters (commitments), and other evidences of indebtednesses, or upon which the foregoing particular causes of action may be founded (and which collateral Trustee is herewith ordered to disclaim), is identified as:

A) Certain Certificates for 5500 shares of 50¢ par value stock of NATIONAL AMERICAN LIFE INSURANCE COMPANY standing in the names of "Charles and Doris P. Coburn."

B) Certain Certificates for 891 shares of the Common stock of FIRST COLONIAL CORP. OF AMERICA standing in the name of "Chester J. Coco."

C) Certain Certificates for 259 shares of the common stock of FIRST COLONIAL CORP. OF AMERICA standing in the name of "Robert A. Mayer."

Upon receipt by Trustee of the sum of $600,000.00 in cash (together with interest thereon as is herein specified) from the clerk of the U. S. District Court for the Middle District

of Louisiana, the said Franz Joseph Baddock, Trustee, is hereby authorized and directed to forthwith file in the foregoing numbered causes, a certified copy of this Amended and Supplemental Order, which shall of itself constitute an abandonment and disclaimer by the Trustee, of all items herein specified; provided further, that said abandonment and disclaimer by the Trustee shall become effective only (1) upon receipt by the Trustee of the sum of $600,000.00 plus interest as herein specified from the Clerk of the U. S. District Court for the Middle District of Louisiana, and (2) the dismissal with prejudice of the Counter Claim asserted by National American Life Insurance Company against Trustee, in Civil Action 72-236.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee shall not assert or reassert in this bankruptcy proceeding any claim or cause of action which has been asserted or might have been asserted by him in any of the aforesaid civil actions; provided, however, that there shall be excepted from this prohibition (and there shall be specifically reserved to the Trustee) the Trustee's right to urge in this bankruptcy proceeding (1) any and all defenses he may have with respect to the efficacy of the purported mortgage or secured claim of National American Life Insurance Company upon the Jackson, Tennessee, Dormitory property or the proceeds of the sale thereof, to the extent that such defenses might have arisen out of that particular transaction, and (2) any and all defenses and objections which he might have with respect to the proof or allowance or amounts of the respective unsecured claims purportedly purchased by National American Life Insurance Company, but without (in reference to (2)) the raising of matters which were or might have been raised in Civil Action No.'s. 72-222, 72-233 and 72-236.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that National American Life Insurance Company

shall release the Trustee from any and claims and causes of action which said National American Life Insurance Company has asserted or might have asserted against the Trustee and/or this estate in Civil Action No. 72-236 (and in No. 72-233 to the extent said action was or would have been consolidated with No. 72-236), and such causes of action shall be dismissed with prejudice; provided, however, that there shall be specifically reserved to National American Life Insurance Company any and all of its rights to assert in this bankruptcy proceeding (1) its purported mortgage or secured claim upon the Jackson, Tennessee, Dormitory property or the proceeds of the sale thereof, and (2) the respective unsecured claims purportedly purchased by it, but without (in reference to (2)) the raising of matters which were or might have been raised in Civil Action 72-236 (and in No. 72-233 to the extent said action was or would have been consolidated with No. 72-236).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon the Trustee's receipt of the aforesaid sum of $600,000.00 in cash with such amount of interest as may have accrued thereon at the date of payment, and his effecting the aforesaid disclaimer (which he is to present and file in the respective proceedings simultaneously with such payment), then, but not before then:

1. All stay orders heretofore entered by this Court with respect to proceedings in the aforesaid Civil Action No. 74-6 (formerly Civil Action No. 69-45 on the docket of the U. S. District Court for the Northern District of Alabama), and

2. The order herein entered by this Court on June 18, 1974, authorizing and directing the Trustee to accept the offer in compromise and settlement which had been submitted to him on June 3, 1974, by Robert E. Wilder,

shall be deemed to have been hereby recalled and vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all books and records of the bankrupt shall remain under the jurisdiction of the U. S. District Court for this Middle District of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, upon the substitution of a party or parties in the place and stead of the Trustee as a party litigant in any of the aforesaid actions, the Trustee and his attorneys shall be and they are hereby authorized and directed to surrender to such successor(s) in interest, upon their (such successor's(s')) receipting therefor, (1) any and all evidentiary materials which have been introduced by and on behalf of the Trustee in the trial of the disclaimed causes of action, (2) any and all additional evidentiary materials scheduled for such introduction and described in existing pretrial orders entered in said proceedings, and (3) any and all promissory notes ,take-out letters (commitments) and other evidences of indebtedness together with any and all collateral pertaining thereto and herein identified, which are to be abandoned and disclaimed by the Trustee pursuant to this Order.

HARVEY H. POSNER
Bankruptcy Judge

I certify that this is a true
copy of the original.

HARVEY H. POSNER

EXHIBIT J

UNITED STATES DISTRICT COURT
For the Middle District of Louisiana

FIRST COLONIAL CORP. OF AMERICA

versus — CIVIL ACTION

ROBERT E. WILDER, ET AL — NO. 72-97

FIRST COLONIAL CORP. OF AMERICA,
through its Trustee-in-Bankruptcy,
FRANZ JOSEPH BADDOCK

versus — CIVIL ACTION

EXECUTIVE NATIONAL LIFE
INSURANCE COMPANY, ET AL — NO. 72-222

FIRST COLONIAL CORP. OF AMERICA,
through its Trustee-in-Bankruptcy
FRANZ JOSEPH BADDOCK

versus — CIVIL ACTION

WILSON P. ABRAHAM — NO. 72-233

ORDER GRANTING MOTION TO SUBSTITUTE PARTY-PLAINTIFF

Considering the motion of John B. Fournet, Receiver of First Colonial Corp. of America, filed herein on the 3rd day of July and the hearing on the motion on July 8, 1974.

IT IS ORDERED that John B. Fournet, Receiver of First Colonial Corp. of America, be, and he is hereby, substituted as party-plaintiff in the above causes.

Baton Rouge, Louisiana, July 11, 1974.

WILLIAM E. CRAWFORD
Special Master

EXHIBIT K

UNITED STATES DISTRICT COURT
Middle District of Louisiana

FIRST COLONIAL CORP. OF AMERICA

Versus — CIVIL ACTION

NATIONAL AMERICAN LIFE
INSURANCE COMPANY — 72-236

ORDER ALLOWING SUBSTITUTION OF PARTY

Upon consideration of the Motion to Substitute Party filed herein by John B. Fournet, as Receiver of First Colonial Corp. of America, it is

ORDERED, that said Motion to Substitute Party should be and is hereby granted, and that John B. Fournet, as Receiver of First Colonial Corp. of America, be and he is hereby substituted for Franz Joseph Baddock, Trustee in Bankruptcy for First Colonial Corp. of America, as Party Plaintiff and as Party Defendant to the Counterclaim in this Civil Action No. 72-236.

IT IS FURTHER ORDERED that this substitution of parties is made and allowed with prejudice to the right of National American Life Insurance Company to prosecute further its Counterclaims in this Civil Action No. 72-236 against Franz Joseph Baddock, as such Trustee in Bankruptcy (as distinguished from the substituted Party Plaintiff herein).

Baton Rouge, Louisiana, this 2nd day of July, 1974.

WILLIAM E. CRAWFORD
Special Master

EXHIBIT L

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

FIRST COLONIAL CORP. OF AMERICA
through its Trustee-in-Bankruptcy, etc.

versus CIVIL ACTION

NATIONAL AMERICAN LIFE INSURANCE COMPANY NO. 72-236

JOINT MOTION FOR DISMISSAL

NOW INTO COURT comes First Colonial Corp. of America through its duly authorized Receiver, John B. Fournet and National American Life Insurance Company through its undersigned counsel on suggesting to the Court that they have settled and compromised their differences herein as reflected in the copy of the compromise agreement annexed hereto and that accordingly the complaints of First Colonial Corp. of America and the counterclaim of National American Life Insurance Company should be dismissed pursuant to and in accordance with the terms of said compromise agreement, and no further, reserving only those rights and claims against all persons whomsoever but reserving only those rights and claims as between the parties as are reserved in the compromise agreement annexed hereto.

CLIFTON CARL
Attorney for National American
Life Insurance Company

JOHN B. FOURNET
Receiver of First Colonial
Corp. of America

EXHIBIT M

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 75-2644

In the Matter of: FIRST COLONIAL CORP. OF AMERICA, Bankrupt.

BERT K. ROBINSON,
Appellant,

versus

AMERICAN BENEFIT LIFE INSURANCE COMPANY, ET AL.,
Appellees.

Appeal from the United States District Court for the Middle District of Louisiana

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ORDER:

IT IS ORDERED that appellant's motion for leave to proceed on the original typewritten record, without the requirement of an appendix, is GRANTED.

/s/ IRVING L. GOLDBERG
United States Circuit Judge

EXHIBIT N

UNITED STATES DISTRICT COURT
Middle District of Louisiana
Office of the Clerk

July 24, 1975

Mr. Richard E. Windhorst, Jr.,
Chief, Judicial Support Division
United States Court of Appeals
for the Fifth Circuit
600 Camp Street
New Orleans, Louisiana 70130

No. 70-334, Bankruptcy — In the Matter of: First Colonial Corp. of America, Bankrupt.
Am. Benefit Life Insurance Co. et al., v. Baddock, etc.;
Bert K. Robinson. (yours nos. 75-2260 and 75-2644)

Dear Richard:

In accordance with your letter of July 23, 1975 and Mr. Robinson's letter of July 18, 1975, I am sending under separate cover 12 boxes containing the records and exhibits filed in civil actions number 72-97 and 733-115.
Please acknowledge receipt on the attached copy of this letter when all 12 boxes have been received.

Very truly yours,

CHARLES H. BANTA, CLERK

By Lawrence Toleman
Deputy Clerk

cc: Bert K. Robinson, Esq.
Erwin A. LaRose, Esq.

B. Boatner Howell, Jr., Esq.
Franz J. Baddock, Trustee
Floyd J. Falcon, Jr., Esq.
Harry McCall, Jr., Esq.
James F. Pierson, Jr., Esq.
F. D. V. dela Barre, Esq.

EXHIBIT O

UNITED STATES COURT OF APPEALS
Fifth Circuit

Office of the Clerk

August 7, 1975

MEMORANDUM TO COUNSEL OR PARTIES
LISTED BELOW:

No. 75-3007 — First Colonial Corp. of America, Etc. v. Executive National Life Insurance Co. Et Al.; Superfine Oil & Gas Co., Et Al v. Bookout, Etc.

Gentlemen:

The following action has this day been taken in the above case:

(X) An extension of time has been granted to and including September 29, 1975.

( ) for filing and docketing record on appeal.
( ) for payment of Court costs.
( ) for withdrawing record for printing.
( ) for filing appellant's printing designation.
( ) for filing appellee's printing designation.
( ) for filing reproduced copies of the record.
(X) for filing appellant's brief.
( ) for filing appellee's brief.
( ) for filing reply brief.
( ) for filing a petition for rehearing.

( )
( )
( ) Order enclosed has been entered.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Mary Beth Breaux
Deputy Clerk

/mbb
cc: Mr. Floyd J. Falcon
Mr. A. Leon Hebert
Mr. Harry McCall, Jr.
Mr. B. B. Taylor, Jr.
Mr. Franz J. Baddock